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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 6 सितम्बर, 2021

का.आ. 630.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (2) के साथ पठित धारा 6 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) की उप-प्रबंध निदेशक (डीएमडी), सुश्री हर्षा भूपेंद्र बंगारी (जन्म तिथि 20.02.1970) को पद का कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, एक्जिम बैंक में प्रबंध निदेशक (एमडी) के पद पर नियुक्त करती है।

[फा. सं. 9/7/2020-आईएफ-I]

अनिंदिता सिन्हारय, निर्देशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 6th September, 2021

S.O. 630.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 6 read with sub-section (2) of section 6 of the Export-Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby appoints Ms. Harsha Bhupendra Bangari (D.O.B: 20.02.1970), Deputy Managing Director (DMD), Export-Import Bank of India (Exim Bank) as Managing Director (MD), Exim Bank for a period of three years from the date of her taking over charge of the post or until further orders, whichever is earlier.

[F. No. 9/7/2020-IF-I]

ANINDITA SINHARAY, Director

नई दिल्ली, 20 सितम्बर, 2021

का.आ. 631.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड.) के उप-खंड द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री दम्मू रवि (आईएफएस: 1989), सचिव (ईआर), विदेश मंत्रालय को अगले आदेशों तक, श्री राहुल छाबरा के स्थान पर भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के निर्देशक मंडल में निर्देशक नामित करती है।

[फा. सं. 9/16/2012 -आईएफ-I]

अर्निंदिता सिन्हारय, निर्देशक

New Delhi, the 20th September, 2021

S.O. 631.—In exercise of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri Dammu Ravi (IFS: 1989), Secretary (ER), Ministry of External Affairs, as Director on the Board of Directors of Export Import Bank of India (Exim Bank) vice Shri Rahul Chhabra with immediate effect and until further orders.

[F. No. 9/16/2012-IF-I]

ANINDITA SINHARAY, Director

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 11 अगस्त, 2021

का.आ. 632.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राजस्थान राज्य सरकार की अधिसूचना सं. एफ.19(8) गृह-5/2021, दिनांक 14.06.2021, गृह (गृ-V) विभाग, जयपुर के माध्यम से जारी सम्मति से, बैंक से धोखाधड़ी करने और इसके साथ लगभग 306.71 लाख रूपए की सदोष हानि पहुँचाने के संबंध में सुश्री मंजू देवी गोयल, मालकिन, मेसर्स रामदेवारा फिलिंग स्टेशन एवं अन्य के विरुद्ध उप महाप्रबंधक और क्षेत्रीय प्रधान, जोधपुर क्षेत्र, बैंक ऑफ बड़ौदा, जोधपुर, राजस्थान द्वारा दर्ज करायी गई शिकायत से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त राजस्थान राज्य में करती है।

[फा. सं. 228/42/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 11th August, 2021

S.O. 632.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Rajasthan, issued vide Notification No. F.19(8) Home-5/2021 dated 14.06.2021, Home (Gr.-V) Department, Jaipur, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Rajasthan for investigation into the offence(s) arising out of the complaint lodged by Deputy General Manager and Regional Head, Jodhpur Region, Bank of Baroda, Jodhpur, Rajasthan against Ms. Manju Devi Goyal, Proprietor of M/s. Ramdevara Filling Station and others pertaining to cheating the Bank and causing wrongful loss to it of approx. Rs. 306.71 lakhs and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/42/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 6 सितम्बर, 2021

का.आ. 633.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, झारखंड राज्य सरकार की अधिसूचना सं.10/सी.बी.आई.-410/2021(खंड)-3100, दिनांक 24 अगस्त, 2021, गृह, कारागार एवं आपदा प्रबंधन विभाग, रांची के माध्यम से जारी सम्मति से, (i) ऑटो रिक्शा की चोरी के संबंध में भारतीय दण्ड संहिता (1860 का 45) की धारा 379 के अंतर्गत दिनांक 29.07.2021 को पाथरडीह थाना, जिला धनबाद में दर्ज एफआईआर सं. 18/2021; और (ii) तीन मोबाइल फोन की चोरी के संबंध में भारतीय दण्ड संहिता (1860 का 45) की धारा 457 और 380 के अंतर्गत दिनांक 13.08.2021 को धनबाद थाना, जिला धनबाद में दर्ज एफआईआर सं. 334/2021 से जुड़े अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त झारखंड राज्य में करती है।

[फा. सं. 228/47/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 6th September, 2021

S.O. 633.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Jharkhand, issued vide Notification No.10/C.B.I-410/2021(खंड)-3100 dated 24th August, 2021, Home, Prison and Disaster Management Department Ranchi, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Jharkhand for investigation into the offence(s) relating to (i) FIR No. 18/2021 registered at Police Station Pathardih, District Dhanbad on 29.07.2021 under section 379 of the Indian Penal Code (45 of 1860) pertaining to theft of auto rickshaw; and (ii) FIR No. 334/2021 registered at Police Station Dhanbad, District Dhanbad on 13.08.2021 under section 457 and 380 of the Indian Penal Code (45 of 1860) pertaining to theft of three mobile phones and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/47/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 634.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार, आदेश सं. सीबीआई 2021/सीआर 80/पीओएल-2, दिनांक 12 मई, 2021, गृह विभाग, मुंबई, के माध्यम से जारी सम्मति से, भारत सरकार को लगभग 8,09,100/- रूपये का सदोष हानि पहुँचाने के लिए (1) डॉ. चंद्रकांत रघुनाथ शिवदिकर, पत्तन स्वास्थ्य अधिकारी, पत्तन स्वास्थ्य संगठन, मार्मुगाव, गोवा (2) श्री अभिषेक खन्ना (3) श्री केशरीनाथ डी पाटिल (4) श्री रविंद्र जे. बालेकर एवं अज्ञात व्यक्तियों के विरूद्ध भारतीय दंड संहिता (1860 का 45) की धारा 120 बी, 420, 467, 468 और 471 और भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) (दिनांक 26.07.2018 से किए गए संशोधन से पूर्व जैसा कि प्रावधान किया गया है) की धारा 7 और धारा 13(2) सपठित 13(1)(घ) के तहत किए गए अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र, एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/49/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 634.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra, issued vide Order No. CBI 2021/CR 80/POL-2 dated 12 May, 2021 of Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Maharashtra for investigation into the offence(s) under section 120 B, 420, 467, 468 and 471 of the Indian Penal Code (45 of 1860) and section 7 and section 13(2) r/w section 13(1)(d) of the Prevention of Corruption Act, 1988 (49 of 1988) (as stood before amendments made w.e.f. 26.07.2018) against (1) Dr. Chandrakant Raghunath Shivdikar, Port Health Officer, Port Health Organisation, Marmugao, Goa (2) Shri Abhishek Khanna (3) Sh. Kesrinath D Patil (4) Sh. Ravindra J. Balekar and other unknown persons for causing wrongful loss of approx. Rs. 8,09,100/- to Government of India and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/49/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 635.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार, आदेश सं. सीबीआई 2021/सीआर 267/पीओएल-2, दिनांक 4 जून, 2021, गृह विभाग, मुंबई, के माध्यम से जारी सम्मति से, श्री भालेराव, वसूली एजेंट, यूनियन बैंक ऑफ इंडिया, पैठान गेट, औरंगाबाद और अज्ञात सरकारी सेवक के विरूद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) और भारतीय दंड संहिता (1860 का 45) के तहत दिनांक 02.06.2021 को की गई शिकायत, जिसके आधार पर दिनांक 04.06.2021 को एक सीबीआई मामला, आरसी पूणे/2021/ए/0002 दर्ज की गई है, से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या

उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र, एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 04.06.2021 से) समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/50/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 635.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra, issued vide Order No. CBI 2021/CR 267/POL-2 dated 04 June, 2021 of Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 04-06-2021) to the whole State of Maharashtra for investigation into the offence(s) arising out of the complaint dated 02-06-2021 against Shri Bhalerao, Recovery Agent, Union Bank of India, Paithan Gate, Aurangabad and unknown public servant, under the Prevention of Corruption Act, 1988 (49 of 1988) and the Indian Penal Code (45 of 1860); based on which a CBI Case RC PUNE/2021/A/0002 has been registered on 04-06-2021 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/50/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 13 सितम्बर, 2021

का.आ. 636.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पंजाब सरकार के अतिरिक्त मुख्य सचिव का कार्यालय, गृह मंत्रालय एवं न्याय विभाग, पीसीएस-II, सेक्टर:9, चंडीगढ़ द्वारा अवगत सं. पीए/एसीएस(एचएंडपी)/2021/सीबीआई/विशेष/2460 दिनांक 17.02.2021, के माध्यम से जारी पंजाब राज्य सरकार की सहमति से, श्री प्रेम कुमार, प्रबंधक (क्यूसी), एफसीआई, एफएसडी, मुल्लनपुर दाखा, लुधियाना एवं श्री राज करण, टीए-1, एफसीआई, एफएसडी, मुल्लनपुर दाखा, लुधियाना के खिलाफ दिनांक 12.02.2021 की शिकायत पर आधारित भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) की धारा 7 एवं भारतीय दंड संहिता, 1860 (1860 का 45) की धारा 120 बी के तहत दिनांक 17.02.2021 को दर्ज सीबीआई मामला अपराध आरसी-00052021ए0003 के कारण उत्पन्न अपराध(धों) के अन्वेषण और ऐसे अपराध(धों) से जुड़े या संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार (कार्योत्तर प्रभाव से दिनांक 17.02.2021) का विस्तार समस्त पंजाब राज्य में करती है।

[फा. सं. 228/41/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 13th September, 2021

S.O. 636.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Punjab conveyed by the Office of the Additional Chief Secretary, Department of Home Affairs & Justice, PCS-II, Sector:9, Chandigarh, vide No. PA/ACS (H&P)/2021/CBI/Spl./2460 dated

17.02.2021, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 17.02.2021) to the whole State of Punjab for investigation into the offence(s) arising out of the complaint dated 12.02.2021, based on which a CBI Case RC-00052021A0003 has been registered on 17.02.2021 against Shri Prem Kumar, Manager (QC), FCI, FSD, Mullanpur Dakha, Ludhiana and Shri Raj Karan, TA-1, FCI, FSD, Mullanpur Dakha, Ludhiana under section 7 of the Prevention of Corruption Act, 1988 (49 of 1988) and section 120B of the Indian Penal Code, 1860 (45 of 1860) and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/41/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 16 सितम्बर, 2021

का.आ. 637.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केरल राज्य सरकार, गृह (एम) विभाग, तिरुवनंतपुरम, की अधिसूचना जी.ओ. (एमएस.) सं. 163/2019/गृह, दिनांक 20 अक्तूबर, 2019 [एस.आर.ओ. सं. 771/2019 के रूप में प्रकाशित], के माध्यम से जारी सम्मति से, भारत सरकार को 4.56 करोड़ रुपए की सदोष हानि पहुँचाने के लिए थाना कसाबा, जिला पालक्काड में भारतीय दंड संहिता (1860 का 45) की धारा 420 के तहत दर्ज अपराध सं. 1046/2015 से संबंधित अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त केरल राज्य में करती है।

[फा. सं. 228/02/2020-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 16th September, 2021

S.O. 637.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Kerala, issued vide Notification G.O. (Ms.) No. 163/2019/Home dated 20th October, 2019, Home(M) Department, Thiruvananthapuram [Published as S.R.O. No. 771/2019], hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Kerala for investigation into the offence(s) relating to Crime No. 1046/2015, registered under section 420 of the Indian Penal Code (45 of 1860) at Police Station Kasaba, District Palakkad for causing wrongful loss of Rs. 4.56 crore to Government of India and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/02/2020-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 16 सितम्बर, 2021

का.आ. 638.—केन्द्र सरकार,एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-3, लखनऊ के पत्र सं. 1452 पी/VI-पी-3-15(11) पी/19, दिनांक 02.12.2019 के माध्यम से जारी सम्मति से, निम्नलिखित तालिका में उल्लिखित मामलों से जुड़े अपराध(धों)का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं

तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

तालिका

क्र.सं.	मामला अपराध संख्या और कानून की धाराएँ	मामला दर्ज होने वाले थाना के नाम
1.	593/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406	दादरी गौतमबुद्ध नगर
2.	595/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406	दादरी गौतमबुद्ध नगर
3.	598/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406	दादरी गौतमबुद्ध नगर
4.	607/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406	दादरीगौतमबुद्ध नगर
5.	614/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420,406	दादरीगौतमबुद्ध नगर
6.	630/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406	दादरीगौतमबुद्ध नगर
7.	867/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406, 323, 504, 506	दादरीगौतमबुद्ध नगर
8.	873/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406, 323, 504, 506, 409	दादरीगौतमबुद्ध नगर
9.	874/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406, 323, 504, 506, 409	दादरी गौतमबुद्ध नगर
10.	875/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406, 323, 504, 506, 409	दादरी गौतमबुद्ध नगर
11.	883/19, भारतीय दण्ड संहिता (1860 का 45) की धाराएँ 420, 406, 46, 468, 471,323, 504, 506	दादरी गौतमबुद्ध नगर

[फा. सं. 228/42/2019-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 16th September, 2021

S.O. 638.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh conveyed vide letter No. 1452 P/VI-P-3-15(11) P/19 dated 02.12.2019, Home (Police) Section-3, Lucknow, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Uttar Pradesh for investigation into the offence(s) relating to the cases mentioned in the following table and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts :-

TABLE

Sl. No.	Case Crime number and the sections of Law	Name of Police Station where registered
1.	593/19, u/s 420, 406 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
2.	595/19, u/s 420, 406 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
3.	598/19, u/s 420, 406 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar

4.	607/19, u/s 420, 406 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
5.	614/19, u/s 420, 406 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
6.	630/19, u/s 420, 406 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
7.	867/19, u/s 420, 406, 323, 504, 506 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
8.	873/19, u/s 420, 406, 323, 504, 506, 409 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
9.	874/19, u/s 420, 406, 323, 504, 506, 409 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
10.	875/19, u/s 420, 406, 323, 504, 506, 409 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar
11.	883/19, u/s 420, 406, 467, 468, 471, 323, 504, 506 of the Indian Penal Code (45 of 1860)	Dadri Gautambudh Nagar

[F. No. 228/42/2019-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 22 सितम्बर, 2021

का.आ. 639.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार, आदेश सं. सीबीआई 2021/सीआर 60/पीओएल-2, दिनांक 23.06.2021, गृह विभाग, मुंबई, के माध्यम से जारी सहमति से, भारतीय स्टेट बैंक एवं 08 अन्य सह-संघ सदस्य बैंकों के साथ धोखाधड़ी करने और उन्हें लगभग रु. 862.06 करोड़ की सदोष हानि पहुँचाने के संबंध में मेसर्स ट्राईमैक्स आईटी इन्फ्रास्ट्रक्चर & सर्विसेज लि. (टीआईआईएसएल), इसके प्रबंध निदेशक, श्री सूर्य प्रकाश मद्रेचा, इसके निदेशक श्री चंद्र प्रकाश मद्रेचा और अज्ञात लोक सेवकों व अन्य के विरूद्ध उप महाप्रबंधक, भारतीय स्टेट बैंक, दबावग्रस्त आस्तियाँ प्रबंधन शाखा-II (स्ट्रेस्ड एसेट्स मैनेजमेंट ब्रांच-II), नरीमन प्वाईंट, मुंबई द्वारा दिनांक 22.12.2020 को दर्ज करायी गई शिकायत से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/56/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 22nd September, 2021

S.O. 639.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra, issued vide Order No. CBI 2021/CR 60/POL-2 dated 23.06.2021, Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Maharashtra for investigation into the offence(s) arising out of the complaint dated 22.12.2020 lodged by Deputy General Manager, State Bank of India, Stressed Assets Management Branch-II, Nariman Point, Mumbai against M/s Trimax IT Infrastructure & Services Ltd. (TIISL), its Managing Director Shri Surya Prakash Madrecha, its Director Shri Chandra Prakash Madrecha and unknown public servants and others, pertaining to cheating and causing wrongful loss of approx. Rs. 862.06 crores to the State Bank of India and 08 other consortium member banks and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/56/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 22 सितम्बर, 2021

का.आ. 640.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-3, लखनऊ के आदेश सं. 1200 पी/VI-पी-3-2020-10(48) पी/2020, दिनांक 02.08.2020 के माध्यम से जारी सम्मति से, श्री संजीत यादव के अपहरण के संबंध में भारतीय दण्ड संहिता (1860 का 45) की धारा 364 के तहत, दिनांक 26.06.2020 को बार्रा थाना, जिला कानपुर नगर में दर्ज मामला अपराध सं. 505/2020 से जुड़े अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/22/2020-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 22nd September, 2021

S.O. 640.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, issued vide Order No. 1200 P/VI-P-3-2020-10(48)P/2020 dated 02.08.2020, Home (Police) Section-3, Lucknow, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Uttar Pradesh for investigation into the offence(s) relating to case Crime No. 505/2020, registered at Police Station Barra, District Kanpur Nagar on 26.06.2020 under section 364 of the Indian Penal Code (45 of 1860), pertaining to abduction of Mr. Sanjit Yadav and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/22/2020-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 22 सितम्बर, 2021

का.आ. 641.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-4, लखनऊ के आदेश सं. 232 (केएच)/VI-पी-4-21-2(21)बी/21, दिनांक 10 मार्च, 2021 के माध्यम से जारी सम्मति से, भारतीय स्टेट बैंक, गोला, गोकरनानाथ में लघु एवं मध्यम उद्योग ऋण ले कर लगभग 7,54,18,798/- रूपये की सदोष हानि पहुँचाने के संबंध में भारतीय दण्ड संहिता (1860 का 45) की धाराएं 406, 409, 419, 420, 467, 468, 471 एवं सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 67 के तहत, गोला थाना, जिला लखीमपुर खिरी में दर्ज मामला अपराध सं. 78/2020 से जुड़े अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/15/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 22nd September, 2021

S.O. 641.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, issued vide Order No. 232(KH)/VI-P-4-21-2(21)B/21 dated 10th March, 2021, Home (Police) Section-4, Lucknow, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Uttar Pradesh for investigation into the offence(s) relating to case Crime No. 78/2020, registered under sections 406, 409, 419, 420, 467, 468, 471 of the Indian Penal Code (45 of 1860) and section 67 of the Information Technology Act, 2000 (21 of 2000) at Police Station Gola, District Lakhimpur Khiri, pertaining to causing wrongful loss of approx. Rs. 7,54,18,798 /- by raising small and medium industries loan in the State Bank of India, Gola Gokarnanath and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/15/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 22 सितम्बर, 2021

का.आ. 642.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार, की अधिसूचना सं. एफ.19(43)गृह-5/2020, दिनांक 06.07.2021, गृह (गृ-V) विभाग, जयपुर के माध्यम से जारी सम्मति से, श्री हेमराज तंवर, मालिक, मेसर्स तंवर कम्प्लीट सर्विसेज, दुर्गापुरा, जयपुर और भारतीय विशिष्ट पहचान प्राधिकरण (यूआईडीएआई) के अज्ञात सरकारी सेवकों के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) और भारतीय दण्ड संहिता (1860 का 45) के तहत दिनांक 26.06.2021 को की गई शिकायत; जिसके आधार पर दिनांक 08.07.2021 को सीबीआई मामला सं. आरसी जेएआई 2021ए0004 दर्ज किया गया है, से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 08.07.2021 से) समस्त राजस्थान राज्य में करती है।

[फा. सं. 228/53/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 22nd September, 2021

S.O. 642.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Rajasthan, issued vide Notification No. F.19(43)H-5/2020 dated 06.07.2021, Home (Gr.-V) Department, Jaipur, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 08.07.2021) to the whole State of Rajasthan for investigation into the offence(s) arising out of the complaint dated 26.06.2021 against Shri Hemraj Tanwar, Owner of M/s. Tanwar Complete Services, Durgapura, Jaipur and unknown public servants of Unique Identification Authority of India (UIDAI) under the Prevention of Corruption Act, 1988 (49 of 1988) and the Indian Penal Code (45 of 1860); based on which a CBI Case RC JAI 2021A0004 has been registered on 08.07.2021 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/53/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 22 सितम्बर, 2021

का.आ. 643.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उपधारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र राज्य सरकार, आदेश सं. सीबीआई 2021/सीआर 393/पीओएल-2, दिनांक 09.07.2021, गृह विभाग, मुंबई, के माध्यम से जारी सहमति से, श्री अखिलेश चौबे, वरिष्ठ मंडलीय यांत्रिक अभियंता (सिनियर डिविजनल मैकेनिकल इंजीनियर), मध्य रेलवे (सेंट्रल रेलवे), नागपुर के विरूद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का 49) के तहत दिनांक 08.07.2021 को की गई शिकायत, जिसके आधार पर दिनांक 12.07.2021 को एक सीबीआई मामला, आरसी-0282021ए0002 दर्ज की गई है, से उत्पन्न अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार (कार्योत्तर प्रभाव से दिनांक 12.07.2021 से) समस्त महाराष्ट्र राज्य में करती है।

[फा. सं. 228/52/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 22nd September, 2021

S.O. 643.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Maharashtra, issued vide Order No. CBI 2021/CR 393/POL-2 dated 09.07.2021, Home Department, Mumbai, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment (ex post facto w.e.f. 12.07.2021) to the whole State of Maharashtra for investigation into the offence(s) arising out of the complaint dated 08.07.2021 against Shri Akhilesh Choube, Sr. Divisional Mechanical Engineer, Central Railway, Nagpur under the Prevention of Corruption Act, 1988 (49 of 1988); based on which a CBI Case RC0282021A0002 has been registered on 12.07.2021 and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/52/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 23 सितम्बर, 2021

का.आ. 644.—केन्द्र सरकार, एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का 25) की धारा 5 की उप-धारा (1) सपठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-11, लखनऊ के आदेश सं. 1091/6-पी-11-2020-61-रिट/2021, दिनांक 22.09.2021 के माध्यम से जारी सम्मति से, महंत नरेंद्र गिरी महाराज, अध्यक्ष, अखिल भारतीय अखाड़ा परिषद की मृत्यु के संबंध में भारतीय दण्ड संहिता (1860 का 45) की धारा 306 के तहत जॉर्जटाउन थाना, जिला प्रयागराज में दिनांक 21.09.2021 को दर्ज मामला अपराध सं. 0322/2021 से जुड़े अपराध(धों) का अन्वेषण तथा ऐसे अपराध(धों) से जुड़े या उससे संबद्ध किसी दुप्रयास, दुष्प्रेरणा और/अथवा षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/60/2021-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 23rd September, 2021

S.O. 644.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, issued vide Order No. 1091/6-P-11-2020-61-writ/2021 dated 22.09.2021, Home (Police) Section-11, Lucknow, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole State of Uttar Pradesh for investigation into the offence(s) relating to case Crime No. 0322/2021, registered at Police Station George Town, District Prayagraj on 21.09.2021, under section 306 of the Indian Penal Code (45 of 1860) pertaining to the death of Mahant Narendra Giri Maharaj, President, Akhil Bharatiya Akhara Parishad and any attempt, abetment and/or conspiracy, in relation to or in connection with such offence(s) and/or for any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/60/2021-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 20 सितम्बर, 2021

का.आ. 645.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई मध्य रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 06/2004) को प्रकाशित करती है।

[सं. एल-41012/167/2003-आईआर (बी-1)]

डी. गुहा, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th September, 2021

S.O. 645.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen.

[No. L-41012/167/2003-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 06/2004

L-41012/167/2003-IR(B-I) dated: 09.01.2004

BETWEEN :

Shri Surendra Kumar Sahu S/o Shri Govind Das Sahu
343, Premganj, Sipri Bazar
Jhansi – 284001.

AND

The Divisional Commercial Manager (Catering)
Central Railway
Jhansi – 283001.

AWARD

1. By order No. L-41012/167/2003-IR(B-I) dated: 09.01.2004the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is as under:

"KYA MANDAL VANIJYA PRABANDHAK (KHANPAAN), MADHYA RAILWAY, JHANSI DWARA SHRI SURENDRA KUMAR SAHU ATMAJ SHRI GOVIND DAS SAHU KO AUDHOGIK VIVAAD ADKHINIYAM, 1947 KI DHARA 25 F KE TAHAT DINANK 30-9-1994 SE CHHATNI KIYA JANA NAYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAQDAAR HAI?"

3. The case of the workman, Surendra Kumar Sahu, in brief, is that he had been appointed in the Catering Department of Central Railway, presently North Central Railway, Jhansi on 10.07.1988; and he had been granted MRCL (Monthly Rated Casual Labour) status on completion of 120 days' service and going through medical test vide letter dated C/192/CL/IIDC/28-12-1992. The workman has submitted that he was engaged in catering services in the Shatabdi Express running between New Delhi to Bhopal and was perennial in nature; but his services had been terminated by the management vide letter C/192/CL/II/DC. 30.09.94 with a mention that 'now your services are no more required'. It has been further stated that the Chief Catering Inspector in his letter dated 26.07.1994 written to the Divisional Commercial Manager (Catering) has mentioned that on termination of said workmen, it shall be difficult to run the catering unit, which goes to show that the rail management was in requirement of services of the workman, even then the Divisional Commercial Manager did not heed to it and terminated the services of the workman. The workman has also submitted that Jhansi, Agra and Matura unit run under Divisional Commercial Manager (Catering) which has more than 200 employees working in it and seniority list is made at division level. The workman has stated that more than 100 employees were working in only Jhansi division, therefore, the provisions of Section 25-F, 25-L and 25-K of the Industrial Disputes Act, 1947 are applicable. It has been alleged by the workman that the management did not get approval of the competent authority before termination of the workman on prescribed Form (PA), thus, the Divisional Commercial Manager (Catering) misused his rights. He has also alleged that since he had attained temporary status therefore Discipline & Appeal Rules, 1968 was applicable on him and action had been taken in accordance thereof but the management did not take any such action. Accordingly, the workman has prayed that termination of the workman in contravention of the provisions of Section 25-F of the Act be quashed and he be reinstated w.e.f. 01.10.1994 with all consequential benefits, including back wages and seniority etc.

4. The management of the Central Railway has disputed the claim of the workman through its written statement; wherein it has submitted that workman had been engaged as daily rated casual labour as per need on 19.05.1989 to supply meals to the passengers of Shatabdi Express Train and after completing 120 days continuous working, he has been given temporary status a per Rules w.e.f. 29.08.1990 and he was retrenched vide letter dated 30.09.1994. The management has submitted that the workman had not been retrenched on account of punishment; rather his services were no more required, therefore, he was retrenched under provisions of Section 25 F of the Act and since he termination was not outcome of any punishment, therefore, the provisions under Discipline & Appeal Rules, 1968 were not followed and no inquiry was held. Accordingly, the management of railways has prayed that the claim of the workman be rejected being devoid of merit.

5. The workman filed its rejoinder; wherein apart from reiterating the averments already made in the statement of claim, he has introduced nothing new.

6. The parties have filed documentary as well as oral evidence in support of their cases. The workman has relied on the evidence already deposed by the workman, Daya Ram Keshwani in I.D. No. 03 of 2004. The said industrial dispute was referred to this Tribunal almost on similar facts. The management examined Shri Thyer Qapumin in support of its case in I. D. No. 03 of 2004 before this Tribunal.

7. Heard learned counsels of parties at length and scanned entire evidence available on record in light of the rival pleadings/submissions of the parties.

8. Both sides have already submitted elaborated written arguments and the reference can be adjudicated on the basis of the materials on record. The main points to be answered in this reference proceedings are as follows:

(i) Whether catering unit is covered under the Chapter V of the Industrial Disputes Act, 1947 (in short, hereinafter stated as the ID Act).

(ii) Whether claimant workman, Surendra Kumar Sahu was retrenched or discharged after proper formalities contemplated in the ID Act.

(iii) To what relief the workman is legally entitled.

9. Point No. (i): In the written statement the opposite party has admitted that the workman was first engaged as DRLC on need basis on 19.05.1989 for supplying meals to the passengers of Shatabdi Express Train and after completion of 120 days of continuous working he was accorded temporary status as per Rules and he was retrenched from the work vide letter No. C/192/CL/II/DC dated 30.09.1994. Though it is pleaded on behalf of the opposite party that the unit was running with workmen much less than 100; but from cumulative examination of the documents marked paper, Ext. W-1, paper No. 11/75, it is amply clear that the catering unit in question was an industrial undertaking engaging much above one hundred workmen. Preparation of food meals cannot be completely segregated from supply of the meals. In other words, in plain language cooking and supply of meals to the railway passengers done by the railway catering unit are complementary activities in one industrial establishment. In the result, it can be logically concluded that before retrenchment of the claimant workman the management opposite party should have followed the procedure enshrined in the 25 N 1 (a) of the ID Act and the other procedure stated in section 25 N of the ID Act should have been strictly followed before retrenchment of the claimant workman. It is manifest from the oral evidence adduced by MW-1 and the documentary evidence that before retrenchment of the claimant worker a burden lies on the management opposite party to establish that it did follow the provisions of section 25 N of the ID Act before effecting retrenchment of the workman. The submissions on behalf the management that catering unit of Shatabdi Express Train was different from the catering units of the other Trains appears to be non-tenable as the same was not specially pleaded in the written statement. Further, this aspect of compartmentalization of catering units is of little consequence as the documentary evidence shows that there were 142 employees engaged in the catering unit. This can be accepted as fact proved. No documentary evidence, showing that the work of the claimant workman was confined to only Shatabdi Express, has been brought to the notice of the Tribunal. Pleadings are not evidence.

10. It has been contended on behalf of the opposite party management that the claim of the workman is barred by limitation. It is pointed out by the management that the workman was terminated in the year 1994 and the industrial dispute was raised in the year 2004. The bar of limitation has not been specifically enshrined in the ID Act. Since the workmen have been retrenched in flagrant violation of chapter V-B of the ID Act, the claims raised by the workman is not barred by limitation. In the award in ID No. 50/2001 in Ref. No. L-41012/246/2000/IR(B-I) dated 19.03.2001, it was concluded by the Presiding Officer, CGIT-cum-Labour Court, Lucknow that the catering unit is not covered under the exclusion clause of the definition of 'Factory' stated in section 2N of the Factories Act, 1948. In the aforesaid case, ID No. 50 of 2001, it was also concluded by the Presiding Officer, CGIT-cum-Labour Court, Lucknow that the provisions of section 25 N of the ID Act were applicable in the matter of retrenchment of workman of the catering unit. It may be correct that after declaration of termination of fellow workers viz. Majid Khan and Siraj Khan as illegal in ID case No. 48/2001 and ID case No. 46/2001 respectively before the CGIT, Lucknow, they were reinstated by the railway. But at this point it appears pertinent to state here that claimant workman, Surendra Kumar Sahu was terminated in 1994 and this industrial dispute was raised in 2004. Whether reinstatement of workman is workable is not clear. Since previously some workmen were reinstated for that ground it cannot be ordered that the present petitioner shall be reinstated when his status at the time of termination was of casual worker. But the workman is to be adequately compensated for illegal termination done by the Railway authorities.

11. In matters of computation of compensation guess work can be resorted to. Since the workman was doing the work of supply of food to the passengers and he claims to be a sincere worker, it is presumable that he could get opportunity to get some amount of earning during the period of disengagement. Taking the whole the circumstances it is directed that the workman is entitled to get compensation of Rupees Five Lakhs which shall be deposited by the management in the bank account of the workman within thirty days from the date of publication of the award, failing which the workman will be entitled to get simple interest at the rate of nine percent till the whole amount is disbursed.

12. In view of the circumstances of the case parties are left to bear their respective costs.

KANPUR.

26th July, 2021

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2021

का.आ. 646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 04/2004) को प्रकाशित करती है

[सं. एल-41012/165/2003-आईआर (बी-1)]
डी. गुहा, अवर सचिव

New Delhi, the 20th September, 2021

S.O. 646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen.

[No. L-41012/165/2003-IR(B-1)]
D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 04/2004

L-41012/165/2003-IR(B-I) dated: 09.01.2004

BETWEEN :

Shri Shabab Khan S/o Shri Yakub Khan
H.No. 38/1, Suryapuram (Nandpura) Near Kundpath
Jhansi – 284001.

AND

The Divisional Commercial Manager (Catering)
Central Railway
Jhansi – 283001.

AWARD

1. By order No. L-41012/165/2003-IR(B-I) dated: 09.01.2004the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is as under:

"KYA MANDAL VANIJYA PRABANDHAK (KHANPAAN), MADHYA RAILWAY, JHANSI DWARA SHRI SHABAB KHAN ATMAJ SHRI YAKUB KHAN KO AUDHOGIK VIVAAD ADKHINIYAM, 1947 KI DHARA 25 F KE TAHAT DINANK 30-9-1994 SE CHHATNI KIYA JANA NAYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAQDAAR HAI?"

3. The case of the workman, Shabab Khan, in brief, is that he had been appointed in the Catering Department of Central Railway, presently North Central Railway, Jhansi on 10.07.1988; and he had been granted MRCL (Monthly Rated Casual Labour) status on completion of 120 days' service and going through medical test vide letter dated C/192/CL/IIDC/28-12-1992. The workman has submitted that he was engaged in catering services in the Shatabdi Express running between New Delhi to Bhopal and was perennial in nature; but his services had been terminated by the management vide letter C/192/CL/II/DC. 30.09.94 with a mention that 'now your services are no more required'. It has been further stated that the Chief Catering Inspector in his letter dated 26.07.1994 written to the Divisional Commercial Manager (Catering) has mentioned that on

termination of said workmen, it shall be difficult to run the catering unit, which goes to show that the rail management was in requirement of services of the workman, even then the Divisional Commercial Manager did not heed to it and terminated the services of the workman. The workman has also submitted that Jhansi, Agra and Matura unit run under DivisionalCommercial Manager (Catering) which has more than 200 employees working in it and seniority list is made at division level. The workman has stated that more than 100 employees were working in only Jhansi division, therefore, the provisions of Section 25-F, 25-L and 25-K of the Industrial Disputes Act, 1947 are applicable. It has been alleged by the workman that the management did not get approval of the competent authority before termination of the workman on prescribed Form (PA), thus, the Divisional Commercial Manager (Catering) misused his rights. He has also alleged that since he had attained temporary status therefore Discipline & Appeal Rules, 1968 was applicable on him and action had been taken in accordance thereof but the management did not take any such action. Accordingly, the workman has prayed that termination of the workman in contravention of the provisions of Section 25-F of the Act be quashed and he be reinstated w.e.f. 01.10.1994 with all consequential benefits, including back wages and seniority etc.

4. The management of the Central Railway has disputed the claim of the workman through its written statement; wherein it has submitted that workman had been engaged as daily rated casual labour as per need on 19.05.1989 to supply meals to the passengers of Shatabdi Express Train and after completing 120 days continuous working, he has been given temporary status a per Rules w.e.f. 29.08.1990 and he was retrenched vide letter dated 30.09.1994. The management has submitted that the workman had not been retrenched on account of punishment; rather his services were no more required, therefore, he was retrenched under provisions of Section 25 F of the Act and since he termination was not outcome of any punishment, therefore, the provisions under Discipline & Appeal Rules, 1968 were not followed and no inquiry was held.Accordingly, the management of railways has prayed that the claim of the workman be rejected being devoid of merit.

5. The workman filed its rejoinder; wherein apart from reiterating the averments already made in the statement of claim, he has introduced nothing new.

6. The parties have filed documentary as well as oral evidence in support of their cases. The workman has relied on the evidence already deposed by the workman, Daya Ram Keshwani in I.D. No. 03 of 2004. The said industrial dispute was referred to this Tribunal almost on similar facts. The management examined Shri Thyer Qapumin in support of its case in I. D. No. 03 of 2004 before this Tribunal.

7. Heard learned counsels of parties at length and scanned entire evidence available on record in light of the rival pleadings/submissions of the parties.

8. Both sides have already submitted elaborated written arguments and the reference can be adjudicated on the basis of the materials on record. The main points to be answered in this reference proceedings are as follows:

(i) Whether catering unit is covered under the Chapter V of the Industrial Disputes Act, 1947 (in short, hereinafter stated as the ID Act).

(ii) Whether claimant workman, Shabab Khan was retrenched or discharged after proper formalities contemplated in the ID Act.

(iii) To what relief the workmanis legally entitled.

9. Point No. (i): In the written statement the opposite party has admitted that the workman was first engaged as DRLC on need basis on 19.05.1989 for supplying meals to the passengers of Shatabdi Express Train and after completion of 120 days of continuous working he was accorded temporary status as per Rules and he was retrenched from the work vide letter No. C/192/CL/II/DC dated 30.09.1994. Though it is pleaded on behalf of the opposite party that the unit was running with workmen much less than 100; but from cumulative examination of the documents marked paper, Ext. W-1, paper No. 11/75, it is amply clear that the catering unit in question was an industrial undertaking engaging much above one hundred workmen. Preparation of food meals cannot be completely segregated from supply of the meals. In other words, in plain language cooking and supply of meals to the railway passengers done by the railway catering unit are complementary activities in one industrial establishment. In the result, it can be logically concluded that before retrenchment of the claimant workman the management opposite party should have followed the procedure enshrined in the 25 N 1 (a) of the ID Act and the other procedure stated in section 25 N of the ID Act should have been strictly followed before retrenchment of the claimant workman. It is manifest from the oral evidence adduced by MW-1 and the documentary evidence that before retrenchment of the claimant worker a burden lies on the management opposite party to establish that it did follow the provisions of section 25 N of the ID Act before effecting retrenchment of the workman. The submissions on behalf the management that catering unit of Shatabdi Express Train was different from the catering units of the other Trains appears to be non-tenable as the same

was not specially pleaded in the written statement. Further, this aspect of compartmentalization of catering units is of little consequence as the documentary evidence shows that there were 142 employees engaged inthe catering unit. This can be accepted as fact proved. No documentary evidence, showing that the work of the claimant workman was confined to only Shatabdi Express, has been brought to the notice of the Tribunal. Pleadings are not evidence.

10. It has been contended on behalf of the opposite party management that the claim of the workman is barred by limitation. It is pointed out by the management that the workman was terminated in the year 1994 and the industrial dispute was raised in the year 2004. The bar of limitation has not been specifically enshrined in the ID Act. Since the workmen have been retrenched in flagrant violation of chapter V-B of the ID Act, the claims raised by the workman is not barred by limitation. In the award in ID No. 50/2001 in Ref. No. L-41012/246/2000/IR(B-I) dated 19.03.2001, it was concluded by the Presiding Officer, CGIT-cum-Labour Court, Lucknow that the catering unit is not covered under the exclusion clause of the definition of 'Factory' stated in section 2N of the Factories Act, 1948. In the aforesaid case, ID No. 50 of 2001, it was also concluded by the Presiding Officer, CGIT-cum-Labour Court, Lucknow that the provisions of section 25 N of the ID Act were applicable in the matter of retrenchment of workman of the catering unit. It may be correct that after declaration of termination of fellow workers viz. Majid Khan and Siraj Khan as illegal in ID case No. 48/2001 and ID case No. 46/2001 respectively before the CGIT, Lucknow, they were reinstated by the railway. But at this point it appears pertinent to state here that claimant workman, Shabab Khan was terminated in 1994 and this industrial dispute was raised in 2004. Whether reinstatement of workman is workable is not clear. Since previously some workmen were reinstated for that ground it cannot be ordered that the present petitioner shall be reinstated when his status at the time of termination was of casual worker. But the workman is to be adequately compensated for illegal termination done by the Railway authorities.

11. In matters of computation of compensation guess work can be resorted to. Since the workman was doing the work of supplyof food to the passengers and he claims to be a sincere worker, it is presumable that he could get opportunity to get some amount of earning during the period of disengagement. Taking the whole the circumstances it is directed that the workman is entitled to get compensation of Rupees Five Lakhs which shall be deposited by the management in the bank account of the workman within thirty days from the date of publication of the award, failing which the workman will be entitled to get simple interest at the rate of nine percent till the whole amount is disbursed.

12. In view of the circumstances of the case parties are left to bear their respective costs.

KANPUR.
26th July, 2021.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2021

का.आ. 647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 03/2004) को प्रकाशित करती है।

[सं. एल-41012/163/2003-आईआर (बी-1)]
डी. गुहा, अवर सचिव

New Delhi, the 20th September, 2021

S.O. 647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen.

[No. L-41012/163/2003-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 03/2004

L-41012/163/2003-IR(B-I) dated: 09.01.2004

BETWEEN :

Shri Daya Ram Keshwani S/o Late Sh. Thakur Das
39317, Premganj, Sipri Bazar
Jhansi – 284001

AND

The Divisional Commercial Manager (Catering)
Central Railway
Jhansi – 283001.

AWARD

1. By order No. L-41012/163/2003-IR(B-I) dated: 09.01.2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is as under:

"KYA MANDAL VANIJYA PRABANDHAK (KHANPAAN), MADHYA RAILWAY, JHANSI DWARA SHRI DAYA RAM KESHWANI ATMAJ SW. DHAKUR DAS KO AUDHOGIK VIVAAD ADKHINIYAM, 1947 KI DHARA 25 F KE TAHAT DINANK 30-9-1994 SE CHCHATNI KIYA JANA NAYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KARMKAAR KIS ANUTOSH KA HAQDAAR HAI?"

3. The case of the workman, Daya Ram Keswani, in brief, is that he had been appointed in the Catering Department of Central Railway, presently North Central Railway, Jhansi on 10.07.1988; and he had been granted MRCL (Monthly Rated Casual Labour) status on completion of 120 days' service and going through medical test vide letter dated C/192/CL/IIDC/28-12-1992. The workman has submitted that he was engaged in catering services in the Shatabdi Express running between New Delhi to Bhopal and the job was perennial in nature; but his services had been terminated by the management vide letter C/192/CL/II/DC. 30.09.94 with a mention that 'now your services are no more required'. It has been further stated that the Chief Catering Inspector in his letter dated 26.07.1994, written to Divisional Commercial Manager (Catering) has mentioned that on termination of said workmen, it shall be become difficult to run the catering unit, which goes to show that the rail management was in requirement of services of the workman even then the Divisional Commercial Manager did not heed to it and terminated the services of the workman. The workman has also submitted that Jhansi, Agra and Matura unit run under DivisionalCommercial Manager (Catering) which has more than 200 employees working in it and seniority list is made at division level. The workman has stated that more than 100 employees are working in only Jhansi division, therefore, the provisions of Section 25-F, 25-L and 25-K of the Industrial Disputes Act, 1947 are applicable. It has been alleged by the workman that the management did not get approval of the competent authority before termination of the workman on prescribed Form (PA), thus, the Divisional Commercial Manager (Catering) misused his authority. He has also alleged that since he had attained temporary status therefore Discipline & Appeal Rules, 1968 was applicable on him and action had been taken in accordance thereof but the management did not take any such action. Accordingly, the workman has prayed that termination of the workman in contravention of the provisions of Section 25-F of the Act be quashed and he be reinstated w.e.f. 01.10.1994 with all consequential benefits, including back wages and seniority etc.

4. The management of the Central Railway has disputed the claim of the workman through its written statement; wherein it has submitted that workman had been engaged as daily rated casual labour as per need on 19.05.1989 to supply meals to the passengers of Shatabdi Express Train and after completing 120 days continuous working, he has been given temporary status a per Rules w.e.f. 29.08.1990 and he was retrenched vide letter dated 30.09.1994. The management has submitted that the workman had not been retrenched on account of punishment; rather his services were no more required, therefore, he was retrenched under provisions of Section 25 F of the Act and since he termination was not outcome of any punishment, therefore, the

provisions under Discipline & Appeal Rules, 1968 were not followed and no inquiry was held.Accordingly, the management of railways has prayed that the claim of the workman be rejected being devoid of merit.

5. The workman filed its rejoinder; wherein apart from reiterating the averments already made in the statement of claim, he has introduced nothing new.

6. The parties have filed documentary as well as oral evidence in support of their cases. The workman examined himself whereas the management examined Shri Thyer Qapumin in support of their respective case. The parties cross-examined the witnesses of each other. The parties availed opportunity of oral as well as written submissions.

7. Heard learned counsel of parties at length and scanned entire evidence available on record in light of the rival pleadings/submissions of the parties.

8. Both sides have already submitted elaborated written arguments and the reference can be adjudicated on the basis of the materials on record. The main points to be answered in this reference proceedings are as follows:

(i) Whether catering unit is covered under the Chapter V of the Industrial Disputes Act, 1947 (in short, hereinafter stated as the ID Act).

(ii) Whether claimant workman, Dayaram Keshwani was retrenched or discharged after proper formalities contemplated in the ID Act.

(iii) To what relief the workmanis legally entitled.

9. Point No. (i): In the written statement the opposite party has admitted that the workman was first engaged as DRLC on need basis on 19.05.1989 for supplying meals to the passengers of Shatabdi Express Train and after completion of 120 days of continuous working he was accorded temporary status as per Rules and he was retrenched from the work vide letter No. C/192/CL/II/DC dated 30.09.1994. Though it is pleaded on behalf of the opposite party that the unit was running with workmen much less than 100; but from cumulative examination of the documents marked paper, Ext. W-1, paper No. 11/75, it is amply clear that the catering unit in question as an industrial undertaking that engaged much above one hundred workmen. Preparation of food meals cannot be completely separated from supply of the meals. In other words, in plain language working and supply of meals to the railway passengers done by the railway catering unit are complementary activities in one industrial establishment. In the result, it can be logically concluded that before retrenchment of the claimant workman the management opposite party should have followed the procedure enshrined in the 25 N 1 (a) of the ID Act and the other procedure stated in section 25 N of the ID Act should have been strictly followed before retrenchment of the claimant workman. It is manifest from the evidence adduced by MW-1 and the documentary evidence that before retrenchment of the claimant worker a burden lies on the management opposite party to establish that it did follow the provisions of section 25 N of the ID Act before effecting retrenchment of the workman. The submissions on behalf the management that catering unit of Shatabdi Express Train was different from the catering units of the other Trains appears to be non-tenable as the same was not specially pleaded in the written statement. Further, this aspect of compartmentalization of catering units is of little consequence as the documentary evidence shows that there were 142 employees engaged inthe catering unit. This can be accepted as fact proved. No documentary evidence showing that the work of the claimant workman was confined to only Shatabdi Express has been brought to the notice of the Tribunal. Pleadings are not evidence.

10. It has been contended on behalf of the opposite party management that the claim of the workman is barred by limitation. It is pointed out by the management that the workman was terminated in the year 1994 and the industrial dispute was raised in the year 2004. The bar of limitation has not been specifically enshrined in the ID Act. Since the workmen were retrenched in flagrant violation of chapter V-B of the ID Act, the claims raised by the workman are not barred by limitation. In the award in ID No. 50/2001 in Ref. No. L-41012/246/2000/IR(B-I) dated 19.03.2001, it was concluded by the Presiding Officer, CGIT-cum-Labour Court, Lucknow that the catering unit is not covered under the exclusion clause of the definition of factory stated in section 2N of the Factories Act, 1948. In the aforesaid case, ID No. 50 of 2001, it was also concluded by the Presiding Officer, CGIT-cum-Labour Court, Lucknow that the provisions of section 25 N of the ID Act were applicable in the matter of retrenchment of workmen of the catering unit. It may be correct that after declaration of termination of fellow worker Majid Khan and Siraj Khan as illegal in ID case No. 48/2001 and ID case No. 46/2001 respectively before the CGIT, Lucknow they were reinstated by the railway. But at this point it appears pertinent to state here that claimant workman, Dayaram Keshwani was terminated in 1994 and this industrial dispute was raised in 2004. Whether reinstatement of workman is workable is not clear. Sincepreviously some workmen were reinstated for that ground it cannot be ordered that the present petitioner shall be reinstated when

his status at the time of termination was casual worker. But the workman is to be adequately compensated for illegal termination done by the Railway authorities.

11. In matters of computation of compensation guess work can be resorted to. Since the workman was doing the work of supplyof food to the passengers and he claims to be a sincere worker, it is presumable that he could have got opportunity to get some amount of earning during the period of disengagement. Taking the whole the circumstances it is directed that the workman is entitled to get compensation of Rupees Five Lakhs which shall be deposited by the management in the bank account of the workman within thirty days from the date of publication of the award, failing which the claimant workman shall be entitled to get nine percent simple interest per annum till the whole amount awarded is disbursed.

12. In view of the circumstances of the case parties are left to bear their respective costs.

KANPUR

26th July, 2021

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2021

का.आ. 648.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, ईरनाकुलम के पंचाट (संदर्भ सं. 28/2015) को प्रकाशित करती है।

[सं. एल-39025/01/2021-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 20th September, 2021

S.O. 648.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ernakulam shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust and their workmen.

[No. L-39025/01/2021-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 3rd day of September 2021, 12 Bhadra 1943)

ID No.28/2015

Workman : Shri.A.Jahankir
C.C.No.18/1977(E)
Palluruthy
Kochi - 682006
By Adv.M.A. Asif

Management : The Chairman
Cochin Port Trust
Willington Island North End
Kochi - 682009

By M/s.B.S.Krishnan Associates

This case coming up for final hearing on 03.09.2021 and this Tribunal-cum-Labour Court on the same day passed the following award.

AWARD

1. Present industrial dispute is filed U/s 2(A)(2) of Industrial Disputes Act, 1947 by the workman requesting for setting aside the order of the appellate authority no.P/S/1/2015/S dt.27.02.2015 and the order no.A6/Dis-Action/AJ/2013-M dt.20.10.2014 imposing a major penalty of compulsory retirement of the workman from the service of the management. The workman was working as forklift operator and was subjected to disciplinary proceedings by the management. According to the article of charges framed against the workman dt.06.10.2013 he stole the properties worth Rs.12,600/- of the management. The workman denied the charges against him. The Enquiry Officer found that the workman is guilty of charges levelled against him. Thereafter the management imposed a major penalty of compulsory retirement against the workman.

2. The workman pleaded that he was acquitted in the criminal case by the Judicial Magistrate of First Class-I, Cochin vide its order dt.28.09.2017 in C.C. no.1063/2015. Once the pleadings are completed, the fairness of the enquiry was taken up as a preliminary issue. The Enquiry Officer was examined and after considering all the evidences, this Tribunal vide its order dt.09.01.2020 held that the enquiry against the workman was not fair and proper and the same was conducted in violation of principles of natural justice and the provisions of Cochin Port Employees (Classification, Control and Appeal) Regulations, 1964.

3. The matter was posted for further evidence of the management. The learned Counsels on either side pleaded that the matter may be taken up in the Adalat. Accordingly the matter was taken up in the Adalat held on 25.08.2021. The management and the learned Counsel for the management proposed a settlement. The Counsel for the workman sought some time to discuss the proposal with the workman. When the matter was taken up for a final decision the workman and the management filed a joint petition stating that they would like to settle the matter out of Court as per the decision taken in the Lok Adalat on 25.08.2021. As per the joint petition the management agreed to take back the workman in the post of mazdoor with continuity of service. The continuity of service of the workman will be considered only for the purpose of terminal benefits. The workman will not be entitled for any back wages/benefits till the date of his reinstatement. It is agreed by the management that the order of reinstatement in the post of mazdoor will be issued to the workman before October 2021. The pay scale of the workman will be Rs.20,900-43,600/-. The workman will be eligible for the pay and allowances including the benefits to which an employee of the Cochin Port Trust is entitled in the post of mazdoor from the date of his reinstatement. Other rules and regulations of Cochin Port Trust applicable to mazdoor category of employees will also be applicable to the workman. The workman on his side agreed that he will not make any claim against the management for back wages or for any other benefits whatsoever from the management other than what is stated above. It was also requested that this Tribunal may pass an Award in terms of the joint petition.

4. Considering the fact that the issues involved in the industrial dispute had already been settled in terms of the joint petition filed by the workman and the management as decided in the Lok Adalat held by this Tribunal on 25.08.2021, nothing remains in this industrial dispute to be further adjudicated.

5. An award is passed in terms of the joint petition filed by the workman and the management which will form part of this Award.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 3rd day of September 2021.

V. VIJAYA KUMAR, Presiding Officer

BEFORE THE HONOURABLE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL CUM LABOUR COURT, ERNAKULAM

ID No.28 of 2015

Cochin Port Trust ... Management

A. Jahankir ... Workman

JOINT PETITION FILED BY THE WORKMAN AND THE MANAGEMENT

1. The workman, A. Jahankir and the management, Cochin Port Trust, agreed to settle the present Industrial Dispute, in the Lok Adalath held on 25.08.2021 at the Central Government Industrial Tribunal cum Labour Court, Ernakulam, on the following terms and conditions.

2. The management agreed to take back the workman in the post of "Mazdoor" with continuity of service. The continuity of service of the workman will be considered only for the purpose of terminal benefits. The workman will not be entitled for any back wages/benefits, till the date of his reinstatement.

3. It is agreed by the management that the order of reinstatement to the post of Mazdoor shall be issued to the workman before October 2021. The pay scale of the workman is as follows Rs.20,900-43,600/-.

4. The workman will be eligible for the pay and allowances including the benefits to which an employee of Cochin Port Trust is entitled in the post of "Mazdoor", from the date of his reinstatement. The Rules and Regulations of Cochin Port Trust, applicable to the employees in the category of 'Mazdoor' will be applicable to the workman from the date of his reinstatement.

5. Sri. A. Jahankir, the workman, agreed to the said conditions and assured that he will not make any claim, against the management for back wages or for any other benefits, what so ever, from the Management, other than what is stated above.

6. Both parties pray that the Hon'ble Court may be pleased to pass an award in the above ID, in terms of this joint petition.

Dated this the 02nd day of September 2021

Signature of parties

Sd/-	Sd/-
Workman (A. Jahankir)	Management
Sd/-	Sd/-
Counsel for the Workman	Counsel for the Management

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 649.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फैक्ट्री मैनेजर/प्रेसिडेंट लाफार्ज इंडिया प्रा. लिमिटेड अरस्मेता, जानीगीर-चांपा (छत्तीसगढ); महासचिव लाफार्ज इंडिया कर्मचारी श्रमिक संगठन (INTUC), जानीगीर-चांपा (छत्तीसगढ) के प्रबंधतंत्र के संबद्ध नियोजकों और अध्यक्ष, गोपाल नगर सोशल वेलफेयर सोसाइटी, जानीगीर-चंपा (छत्तीसगढ), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/2/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2021 को प्राप्त हुआ था।

[सं. एल-29011/5/2015-आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/2/2017) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Factory Manager/President Lafarge India Pvt. Ltd. Arasmeta, Janigir-Champa(CG); The General Secretary Lafarge India Employees Shramik Sangathan (INTUC), Janigir-Champa (CG) and The President, Gopal Nagar Social Welfare Society, Janigir-Champa (CG), which was received by the Central Government on 21.09.2021.

[No. L-29011/5/2015-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/2/2017

Present: P. K. Srivastava, H.J.S..(Retd)

The President,
Gopal Nagar Social Welfare Society,
Lafarge India Pvt. Ltd., Post-Gopal Nagar,
Disrtrict Janigir-Champa (CG)-495663 ... Workman

Versus

1. The Factory Manager/President (Works)
Lafarge India Pvt. Ltd. Arasmeta,
Cement Plant, Post-Gopal Nagar,
District Janigir-Champa (CG)-495663

2. The Genral Secretary,
Lafarge India Employees Shramik Sangathan (INTUC),
Arasmeta, Post-Gopal Nagar,
District Janigir-Champa (CG)-495663 ... Management

AWARD

(Passed on this 26th day of August-2021)

As per letter dated 19/12/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/5/2015-IR(M). The dispute under reference relates to:

"***Whether the demand of the Union for fixing the rate of wage at par with Cement Wage Board Award dated 18-7-1983 w.e.f. 1-4-2014 is justified? If not so, to what relief are the concerned workmen entitled?"***

1. After registering the case on the basis of reference, notices were sent to the parties.

2. Inspite of notice to both the parties, none of the parties have filed their statement of claim or defense. It appears that the parties are not interested to pursue their claim/defense.

3. Hence this tribunal is constrained to decide the reference against the workman because the initial burden to prove the case lies on the workman.

4. Accordingly following award is passed:-

A. The demand of the Union for fixing the rate of wage at par with Cement Wage Board Award dated 18-7-1983 w.e.f. 1-4-2014 is not held to be legal and justified.

B. **The concerned workmen are held entitled to no relief.**

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 650.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. दो चण्डीगढ़ के पंचाट (संदर्भ संख्या 25/2018) को प्रकाशित करती है।

[सं. एल-12025/01/2021-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 650.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/01/2021-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.25/2018

Registered On:-31.10.2018

Ajay Kumar S/o Sh. Malook Das, R/o H. No.971, Ward No.14,
Patel Nagar, District Hissar. ... Workman

VERSUS

1. The Deputy General Manager, State Bank of India. Zonal Office, Rohtak.
2. The Assistant General Manager, Regional Business Office,
   State Bank of India, Sector-14, District Hisar.
3. The Chief Manager, State Bank of India, Railway Road, Hissar.
4. Assistant General Manager (Personnel), State Bank of India
   (Formerly State Bank of Bikaner & Jaipur), Local Head Office,
   Tilak Marg, C-Scheme, Jaipur-302005.
5. Chief General Manager, State Bank of India
   (Formerly State Bank of Bikaner & Jaipur),
   Local Head Office, Tilak Marg,
   C-Scheme, Jaipur-302005. ... Responents/Managements

AWARD

Passed On:-01.09.2021

1. The workman Ajay Kumar has directly filed this claim petition under Section 2-A of the Industrial Dispute Act 1947(hereinafter called the Act) for his reinstatement in service with full back wages along with all consequential benefits with interest.

2. Claimant Ajay Kumar has stated in his claim petition that he was appointed by respondent no.3 Bank-employer in the month of May, 2008 after following the proper procedure strictly in consonance with Article 14 and 16 of the Constitution of India as full time Sweeper without any appointment letter and to substantiate this plea, the competent-authority recommended the name of the claimant/workman(Annexure A-1) and thereafter, the work of Peon/Daftri was being taken from the workman till his termination in the month of March, 2018. The claimant/workman was drawing a salary of Rs.7,000/- per month when the services of the workman was terminated. After appointing the workman, the management had transferred his services through service provider in an illegal manner and without informing the workman and when the workman disputed then the management being in dominant position, asked the workman that the conditions are acceptable to him. The workman was left with no alternative but to surrender and accept his services through service provider. Management paying the other expenses like Auto Rickshaw Charges for bank work i.e. Dak Delivery, Fax repair, Loan Notice Delivered, purchase of stationary etc. to the workman directly in his bank-account. Management-bank generated ID of the workman as AJAY1282822 as sub-staff employee and reimbursed TA bills, auto rickshaw charges etc. The case of the workman was also sent for regularization of his service by the management but the same was not finalized by the bank(Annexure A-2). The State Bank of Bikaner & Jaipur was merged with the State Bank of India w.e.f. 1st April, 2017, the branch was converted into SBI Branch and continue to function till Sept., 2017 and then from 1st October, the branch was merged with another branch on Railway Road, Hisar and the staff of the State Bank of Bikaner & Jaipur also took over by the State Bank of India except the workman for the reason best known to the management and by taking the benefit of the service of workman through service provider, he was simply asked not to come to Bank w.e.f. March, 2018. The workman had 10 years of unblemished service with the management before he was orally terminated from the

job in the month of March, 2018 without assigning any reason and also without issuing any charge-sheet, enquiry or following the principal of natural justice and without paying any retrenchment compensation. The termination of the workman is illegal, against the principal of natural justice, unfair labour practice, violation of Minimum Wages Act and in violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is therefore, respectfully prayed that the workman may kindly be reinstated in service with full back wages along with all consequential benefits with interest.

3. Management filed written statement, alleging therein that as per the Bank-policy, the workman was engaged by the contractor for providing service to the Bank as part time Sweeper/Peon from time to time. The workman was never employed by the management therefore, the termination of the services of the workman by the management does not arise. It is denied that the workman worked for the time period as alleged and the persons are being employed by service provider agencies for certain work and period. No T.A. Bill and expanses were ever paid to the workman by the management-bank as an employee of the Bank. The travelling expenses were paid to the workman only where he was sent outside on the request of the bank in emergent situations. There is no relationship of employer and employee between the workman and the respondent-management. No provisions of the Industrial Disputes Act, 1947 have been ever violated by the respondent-management. No notice of the termination of the workman was required to be served on the workman by the management as he was never employed by the management. At present under the new policy of the bank, if any post of Peon or Daftri exists and is required to be filled, that is to be filled by following the regular process of appointment under the Rules and Regulations of the Bank. It is therefore, prayed that the workman is not entitled for any.

4. Workman has filed replication to the written statement filed by the management, denying the facts that the workman was engaged through contractor. It is further denied that the workman was never employed by the management and termination of the services of the workman by the management does not arise. Notice is required to be served on the workman before his termination by the management as the workman was employed by the management and relationship of employee and employer was there between the workman and management. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

5. Claimant/workman Ajay Kumar has submitted his affidavit as Ex.WW1/A along with documents bearing 60 pages(colly) and cross-examined by the learned counsel of the management.

6. Management has submitted affidavit of witness Jagan Lal, Chief Manager, State Bank of India, Railway Road Branch, Hisar, who submitted his affidavit as Ex.MW1/A who is cross-examined by the learned counsel of the workman.

7. I have heard the learned counsel of the workman Smt. Bhupinder Kaur as well as learned counsel of the management Sh. S.K. Gupta and perused the file.

8. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through the service provider agency is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

9. The first contention is regarding the claimant to be not a workman advanced by the learned counsel of the management, alleging therein that even if it is presumed that he was appointed by the management on job basis for a particular time even then he does not fall within the definition of workman as such, the Industrial Disputes Act, 1947 is not application to the present case. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing***

whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. Learned counsel of the management contended that the alleged termination of the workman does not fall within the ambit of retrenchment because he is not a regular employee and working on behalf of the security agencies mentioned in the written statement namely M/s Longia Security Cover as well as Mrs. Narinder Kaur, Manpower and Security Suppliers as such, he is temporary employee working on daily wages under the circumstances, his dis-engagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act, 1947. As per the learned counsel of the management, the concept of retrenchment therefore, cannot be stretched to such an extent to cover the claimant as an employee of the management and protection under Section 25-F and other Sections of the EPF & MP Act are applicable to the claimant. Learned counsel of the management-bank contended that alleged dis-engagement/retrenchment does not fall within the definition of retrenchment incorporated in Section 2(oo) of the Industrial Disputes Act, 1947 in the light of the judgment of Hon'ble Supreme Court in the case of ***Himanshu Kumar Vidyarthi and others Vs. State of Bihar & Others, AIR 1997, Supreme Court, page 3657*** as well as judgment of Division Bench of the Hon'ble Punjab & Haryana High Court in the case of ***Divisional Forest Officer, Rohtak Vs. Jagat Singh and another, C.W.P. No.7957 of 2008, decided on 06.11.2008***.

11. So far as the relationship of employer and employee is concerned, learned counsel of the claimant/workman contended that it is admitted fact by the management that the workman served with the management do not directly by on behalf of the Security Service Providing Agency such as M/s Longia Security Cover as well as M/s Narinder Kaur Manpower Security Suppliers but management has not submitted any contract entered into between the management and Security Cover and Manpower Agency. In this context, learned counsel of the claimant has drawn my attention towards the statement of management witness namely Jagan Lal, Chief Manager, State Bank of India, Railway Road, Hissar. This witness has specifically admitted in his cross-examination that he has no record regarding the agreement with M/s Longia Security Cover as well as M/s Narinder Kaur Manpower Security Suppliers. Thus, there is no evidence at all on the part of the management to prove that workman was engaged through the above mentioned agencies as is stated in the written statement.

12. Learned counsel of the workman contended that payment of salary as well as other expenses like auto rickshaw charges, dak delivery, fax report, no notice delivery, purchase of stationary etc. along with T.A. bills etc. are reimbursed by the bank from its account. Learned counsel of the workman contended that all the documents are in possession of the management which has not been produced before the Tribunal for passing a reasoned award because it was against the bank-management. It is specifically pleaded that the claimant's services were sent for regularization copy of letter is Annexure A-2 along with recommendation letter copy of which is Annexure A-1. Question remains to be seen whether claimant has proved that he was directly engaged by the respondent-management in the month of May 2008 and rendered his services till the alleged retrenchment/termination on March, 2018. This fact has to be proved by the documentary evidence as well as oral evidence in order to prove that he was employed by the management directly. He has submitted his affidavit as Ex.WW1/A and relied upon the documents bearing 60 pages(colly) pertaining to bank-accounts and recommendation of his name for regularization. Claimant Ajay Kumar has been cross-examined by the learned counsel of the management where he has admitted that there was neither any advertisement nor recruitment nor he was appointed after due selection procedure. He has admitted that he was employed by the Branch Manager and paid salary by the bank-Manager throughout his service tenure. Thus, it is clear from the cross-examination of the claimant that his appointment was not as per the Rules and Regulations of the Bank instead he was directly appointed by the Bank-Manager, performing the work of Sweeper and subsequently, he was also engaged for other works like Dak Delivery, FAX Repait, Loan Notice Delivery, Purchase of Stationary etc. It is a specific case of the workman that he was earning Rs.7,000/- as salary at the time of his retrenchment which is proved by the bank-accounts of the workman. Learned counsel of the claimant contended that all the payments are made from the State Bank of India account which is rebutted by the learned counsel of the management but there is nothing on record to prove that claimant was paid by any service provider agency as mentioned in the written statement of the management.

13. Undoubtedly, in Tribunal, cases have to be decided on the basis of the preponderance of the probability and not the proof beyond reasonable doubt. Similarly, the Hon'ble Supreme Court in the case of ***Municipal Coruporation Faridabad Vs. Shri Niwas, Appeal(Civil) 1581 of 2009, decided on 13.09.2004*** has held that provisions of Indian Evidence Act in an adjudication, the general principles provided however, applicable. It is also in pray for the Industrial Tribunal to see that principle of natural justice are complied with burden of proof

is on the claimant/workman. Learned counsel of the workman has contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of UP Civil Appeal No.2461 of 1999 decided on 21.07.2003***, that adverse inference should be drawn against the management for the non-production of the documents. Thus, as per the admission of the management witness namely Jagan Lal, Chief Manager and oral evidence and documentary evidence filed by the workman, it is beyond doubt that claimant has initial burden with respect to the onus that he was in the employment of management.

14. So far as the wages and salary of the workman is concerned, it is alleged in the claim statement that he was initially appointed as Sweeper and subsequently work of Sweeper is also assigned as per need basis and additional expenses relating to these works has been paid by the bank-management. He has specifically stated that he had worked with the management from May 2008 to March, 2018 regularly and has completed 240 days in each calendar year. During the course of cross-examination, workman has specifically stated that he worked for 240 days before his retrenchment/termination by the bank-management. Learned counsel of the claimant contended that the entire work of the claimant was in actual control of the bank-management along with the payment of salary. Learned counsel of the management contended that salary was not made by the bank and additional expenses may have been paid by the bank from the contingency fund but the factum of the engagement of the service provider agency as is mentioned in the written statement could not be proved by the management. Hence, the argument advanced by the learned counsel of the management by the service provider agency is baseless and without any cogent evidence. In fact, there is no evidence that he was paid by the service providing agencies mentioned in the written statement for any month during the course of his services in the bank. It is noteworthy that factum of his 240 days with the management before his termination is not specifically denied by the management. There may be no dispute that burden is on the claimant/workman to prove a jurisdictional fact that he put 240 days of services as required by Law. But if the assertion of the workman is not denied by the management either in its written statement or in evidence then neither the question of burden nor onus is required to be discussed in detail. It is also noteworthy that management did not produce the best evidence in proof as he had not completed 240 days and it is suddenly fall upon the workman who was compelled by silence of the management to seek all the records when faced with the situation. What is to be noted is that the management did not take the lead to rely on its evidence based on record then by its act of non-production of the attendance and payment records serious suspicion is caused that everything was not alright in the management.

15. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management-bank has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the management as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the management. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman was rendering his services with the management for almost 10 year and he had completed 240 days in the year 2018 before termination by the management. As per pleading and affidavit of the workman he was terminated in March 2018 without compliance of Section 25-F of the ID Act. Learned counsel of the workman contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents regarding working days in establishment. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that he had worked for 240 days in preceding 12 months prior to his alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, 1947.

16. Contrary to this, learned counsel of the workman contended that the conduct of the management amounts to unfair labour practice as well as termination amounts retrenchment in the light of the judgment of Hon'ble Supreme Court in the case of ***Bhuvnesh Kumar Dwivedi V. Hindalco Industries Ltd. Civil Appeal Nos.4883 and 4884 of 2014(arising out of SLP(C) Nos.554 and 555 of 2012), decided on 25.04.2014***. In case of ***Bhuvnesh Kumar Dwivedi(supra)***, the Hon'ble Supreme Court while dealing with a similar case as in hand has held in the light of the judgment of three Judges Bench of Hon'ble Supreme Court in ***State Bank of India Vs. Shri N. Sundara Money, AIR 1976 SC 1111***, and has held that termination of service of the workman in

such cases amounts to retrenchment. The Hon'ble Apex Court has referred the relevant paragraph of ***State Bank of India Vs. Shri N. Sundara Money(supra)*** as follows:-

> ***"A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination...for any reason whatsoever' are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It meets to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service effluxion of time cannot be sufficient." An English case R.V. Secretary of State (1973) 2ALL E.R. 103; was relied on, where Lord Denning, MR observed:***
>
> ***I think the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things-either to termination of notice or termination by effluxion of time. It is often used in the dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.***
>
> ***Buckley L.J, concurred and said:***
>
> ***In my judgment the words are not capable of bearing, that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a Composite order one giving employment and the other ending for limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."***

17. The Hon'ble Supreme Court in the case of ***Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari, AIR 2005 SC 2799,*** relied by the learned counsel of the workman on the basis of three vouchers produced by the workman and rendering services of more than 240 days with the Bank has held that there exists relationship of employer and employee and confirmed the order of the Tribunal regarding the regularization of the workman. Same is the position in the case of ***Oil and Natural Gas Corporation Vs. Krishan Gopal(2020) SCC Online, Supreme Court 150***. In both the cases where workman rendered his services for a considerable period with the management, order of regularization is confirmed. It is pertinent to mention that the evidence on record shows that the period of service of the workman extended to 10 years with motive so as to retain the workman as a temporary worker and deprive the workman of his statutory right of permanent workers and status. The aforesaid conduct of the management-bank perpetuates unfair labour practice as defined under Section 2(r) of the Industrial Disputes Act, 1947 which is not permissible in view of the Section 25-T and 25-U of the Industrial Disputes Act, 1947 read with Entry at Serial No.10 in Vth Schedule of the Industrial Disputes Act, 1947 regarding the unfair labour practice. It is not disputed that management has neither issued notice nor compensation in lieu of notice as is enshrined under Section 25-F of the Industrial Disputes Act, 1947.

18. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workman has worked with the management-bank from May, 2008 to March 2018. There is no legal show cause notice or charge-sheet issued to the claimant/workman by management-bank. Moreover, the job of the claimant/workman to do Sweeping work is of perennial and regular in nature. Learned counsel of the workman contended that in the given scenario, facts and evidence on record, it is crystal clear that management-

bank has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with continuity of service and entire back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel of the workman has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** *reported as (2013) 10 SCC 324, Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80, Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd.(supra), Punjab National Bank Vs. Ghulam Datsgir(1978) ILLJ 312, Supreme Court, G.M. Tanda Thermal Power Project Vs. Jai Prakah Srivastava & Anr. Civil Appeal Nos.4809-4810 of 2007(Arisingojut of SLP(C) Nos.9380-9381 of 2005), decided on 11.10.2017, as well as judgment of the Division Bench of Hon'ble High Court in the case of The Head Master, Government High School, Behrana Vs. Ajit Singh and another, CWP No.9451 of 2002, decided on 26.08.2003.*

19. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under:-

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> *(i)* ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> *(ii)* ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

20. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as void ab initio, sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

21. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman along with payment of back wages.

22. Undoubtedly, in cases relied by the learned counsel of the management of Hon'ble Supreme Court as well as Hon'ble High Court of Punjab & Haryana has held that service of daily wager if terminated, it does not fall within the retrenchment as defined under Section 2(oo)(b) of the Act as such, workman cannot be reinstated on account of violation of Section 25-F and 25-G of the Industrial Disputes Act, 1947. Similar view is expressed by the Hon'ble Supreme Court in the case of ***G.M. Tanda Thermal Power Project Vs. Jai Prakash Srivastava & Anr.(supra).*** The relevant and decisive factor in both the cases was that workman was a daily wager not a regular employee who has served more than 10 years with the management. But so far as case in hand is concerned, it is a proven fact that workman has rendered regular and continuous service for 10 years with the management. As such, the case law relied by the learned counsel of the management is not applicable to the present case.

23. So far as this case is concerned, workman has prayed his reinstatement in service with full back wages along with all consequential benefits with interest. The workman has specifically pleaded in his petition as well as in his evidence that he is unemployed since his retrenchment/termination. Moreover, nothing has been cross-examined from this witness regarding his post employment as such, the factum of his unemployment is unrebutted as management has not submitted any cogent evidence with respect of his future employment after the alleged termination. It may be presumed that workman has certainly done some work for his livelihood in these years. Hence, by looking the period of retrenchment, the tenure of service of the workman, the nature of service, this Tribunal is of the considered opinion that workman is entitled for reinstatement in service along with 50% back wages and the management is directed to reinstate the workman within three months from the date of the notification of the award.

24. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 38/2015-16) को प्रकाशित करती है।

[सं. एल-41011/65/2015-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 651.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2015-16) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen.

[No. L-41011/65/2015-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/38/2015-16

Date: 17.03.2021

Party No.1:

(a) The Divisional Railway Manager,
South Eastern Central Railways,
Bilaspur (CG), BILASPUR

(b) The Sr. Divisional Commercial Manager,
South East Central Railway,
Kingsway Station Road,
Nagpur – 440001.

(c) The Chief Parcel Supervisor,
South East Central Railway,
Parcel Office, Gondia

V/s

Party No.2:

Smt. Kanta Sudam Kavde,
Through General Secretary,
New Mankapur, Plot No. 37,
Mhada Colony ke pas,
Nagpur – 440030.

AWARD

(Dated:-17th March 2021)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of South East Central Railway and Smt. Kanta Sudan Kavde for adjudication, as per letter **No.L-41011/65/2015 IR (B-I) dated 11.12.2015,** with the following schedule:-

1. **"Whether Smt. Kanta Sudan Kavde, License Porter is a workman"?**

2. **"Whether the action of the management not to allow her to work even after receiving the license fee upto 13/07/2011 and sudden seizure of badge (No. 57) without any show cause is legal and justified? If not, then what relief Smt. Kanta Sudam Kavde, License Porter is entitled to"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Parcel Porters Sanghathan("The Union" in short) filed the Statement of Claim and the Management of South East Central Railway("Party No.1" in short) filed its Written Statement.

3. The worker, through the Union filed Statement of Claim by asserting that, the workman raised his dispute through A.L.C. Nagpur and asserted that, he was work as a Licensed Porter as per Railway rules and regulations on 26.02.2008 and Railway issued a License through Badge No.3 on 26.02.2008, but "Badge transfer was taken place wrongly." It should be simply adjudged the Licensed Porter------- copied the fake remark of Commercial Department.

4. According to the workman, he regularly paid the license fee for renew his license and Railway issued a Valid Identity Card to him. Railway also issued Railway Recruitment Rules in which minimum educational qualification is VIII Std. According to him, appointment will be subjected to surrendering the license and Badge and right to be a License Porter, but Screening Committee without extending his employment, taken back his valid License and Badge illegally. Railway did not return his License or Badge.

5. According to the workman, "Metal Badge to perform his duties as Station licensed porter at Gondia railway station of South East Central Railway of Nagpur Division. License issued an authorization to perform his duty as licensed porter under Rule 3014 & 3015 of Indian Railway. That applicant undergone Medical Fitness and found fit for such job."

6. According to the workman, "An identity Card also issued by the Management to authorizing him to perform his duties at Railway platforms within the Station limits. Daily attendance given to Station Master of Gondia Railway Station for Proper display in Notice and announcement to common Passengers for ensure their safety on their personnel luggage. ---------- The local rate is fixed and the licensed porters are bound to receive porterage on prescribed limit only as their salary."

7. According to the workman, "There is strong relationship exist in between the workman applicant with the management of Senior Divisional Commercial Manager S.E.C.Railway of Nagpur Division. Employer granting license under commercial manual Vo-11.---------- During the Commercial Officer visit the said officer snatched the license from the Porter on 2011 without valid reason, all of a sudden, & without issuance of any notice, violating the natural justice & equal opportunity etc."

8. According to the workman, "It is most vital point is that the workman is livelihood is depending on it. He is the bread winner of his family and such rude behavior is misuse of official position. It is unfair labour means & violation of law."

In this way workman pray that management directed that to return his badge to earn for his livelihood immediately, and also pray that disciplinary action must be take in against the present commercial officer, who violating norms sponsored by the railway. Also pray that lay off compensation and other suitable relief.

9. On behalf of the management, it was admitted that, workman raised his dispute before A.L.C. against seizure of Badge and Railway Board issue circular carrying No.RBE50/2008 and admitted that, Railway issue, "No. 85/TG-II/1010/08/License Badge/Policy/New Delhi dated December 9th 1988 wherein the Government of India has decided that the porters license may be transfer to his son or if he has not son or his son is no alive to his nearest relative in the even of death or when he becomes very old, infirm or very seek and is not able to carry out his duties properly, the son will include the adopted son. Nearest relative will include brother or brothers son or wife brother and it has been further inform that before allowing such transfer of license. ---------- The said provisions has not been complied by the applicant and therefore the grievance of the applicant should be rejected and it be rejected with heavy compensatory costs."

10. On behalf of the management WS return statement filed by denied all material fact asserted in para no. 1, 3, para no. 9, para 14 and para 15 by asserting and raising following point. I want to mention here some important fact raise by the management party no. 1 in following way:

(a) "It is further denied that he was issued the license to perform the duties as a licensee porter on railway platform Gondiya by the respondent No. 1. There is no agreement in respect of employment of the applicant with the contents are specifically denied. Rest of the contents are in connection with the uniform and its rate defined in commercial manual issued by the Ministry of Railway being matter of record hence needs no specific reply.

(b) "The license porter badge No. 57 was issued to the father in law of the applicant namely Ghondu Maroti and he had expired. 57 was used by a fictitious person for illegal personal gain, and the respondent No. 1 the said badge no. 57 was seized from the applicant and he was stopped from working as a licensee porter at Gondiya Platform hence there is no illegality on the part of the officials of the respondent No. 1 and therefore there is no reason for the applicant to approach this Hon'ble Tribunal for redressing the grievance.

(c) "He has not falling within the category of workman and as he is not the workman".

(d) "It is not within the knowledge of answering respondent No. 1 as to how the information was obtained by the applicant through its registered trade union that there exists the dispute between the workman and their employer.

(e) "It is pertinent to note that the father-in-law of the applicant has expired way back and the applicant is approaching this Hon'ble Tribunal almost after long period and this delay has not been properly explained by the applicant or its Union as to why such delay was caused through it is placed on the record.

(f) "Needless to mention here that late Ghondu Maroti has not nominated and his family members in the service book which would entitle the applicant to get the transfer of badge No. 57 in his name.

(g) "Perhaps due to wrong representation and imposing the licensee porter the applicant was using the badge No. 57 for his illegal personal gains.

Management pray that grievance of workman should be rejected with heavy costs. And also pray that he did not entitled any relief.

POINTS OF DETERMINATION

(i) Whether the petitioner Smt. Kantabai is a workman?

(ii) Whether the action of management to seizure of the badge is illegal and unjustified?

(iii) Whether the workman is entitled to any relief?

REASONS FOR DECISION

11. On behalf of the workman it was argued that railway issued a circular regarding licence holders and working conditions. He also argued that Railway Board Policy regarding licence porter badge is very clear. According to them, it must be transferred to his son or any other relative. He also argued that near relative include porter's brother or nephew and his wife's brother i.e. Sala.

12. On behalf of the workman it was argued that Railway provides some facilities to licence porters e.g. dress, 3 passes, privilege ticket and set up uniform etc. According to the workman, Station Manager is an appropriate competent authority of such misconduct of Parcel porters and license porters are under the direct control of Station Manager / Master.

13. According to the workman, party No.2, badge No. 57 was originally allotted to her father-in-law namely Mr. Dhondu Maroti Kavade who legally transferred this badge to his daughter-in-law i.e. workman. According to the workman, after the death of his son [original badge holder] his widow daughter-in-law, to earn livelihood for their family is working as station coolie and she regularly paid license fee to the railway.

14. According to the workman, ACM Mr. Paul snatched her badge on 5.12.2011 illegally so she is entitled lay off compensation from management. They also asserted that act of Mr. Paul is miss-using big official power and position. So they pray that badge No. 57 is returned to the workman and she be allow to work as license porter at Gondia Railway Station. They also pray that they are also entitled for compensation for mental & physical harassment and also pray that action against the management for unfair legal means.

15. Management denied this argument by asserting that there was no agreement in respect of employment of workman with management i.e. party No.1 and also argued that she used fictitious belt without legally

transferred to her name. So according to railway, party No.1 she was stopped from working as a license porter at Gondia platform. They also argued that they are not falling within the category of workman so their exists no relationship between employer and employee.

16. According to management, workman's father-in-law had expired day back and she approached the tribunal almost after long time. The delay has not been properly explained. They also argued that she is not entitled to any compensation because she has not communicated the death of Shri Bhimrao Ambade. According to management, original badge holder has not nominated any of the family members in his service book. So she is not entitled to get transfer of badge No. 57 in her name. They also argued that she is not fall under the purview of original badge holder, so she is not entitled to any relief.

17. On behalf of the workman, he examined herself to support his statement of claim and she admitted following facts "I have not filed any document showing the registration of the union. ---------- The Badge No. 57 had been originally issued in favour of my father-in-law, Dhondu Maroti Kavde. ---------- I got this badge after the death of my father-in-law. ---------- After death of my father-in-law, I informed the railway about the death but I did not file any document in this regard. ---------- I am illiterate. I do not know English and Law. ----- I have not filed any document or copy of the application in this regard. ---------- Before the death of my father-in-Law, my husband, Sudam Kavde had already died. My husband was only the only son of my father-in-law." and on behalf of the Party No. 1, they examine Smt. K. Mangamma Rao, who were working as Chief Office Superintendent in S.E.C. Railway Nagpur. She admitted that following facts in the court statement, "I do not personally know Kanta Sudam Kawde W/o Sudam Kawde, badge no. 57. ---------- Sr. D.C.M. is authorized to issue badge and license of the licensed porter. ---------- The Chief Parcel Supervisor is the supervising incharge of licensed porters at Gondia Station ---------- Badge is issued in favour of Gondu Maroti, who was father-in-law of Kanta bai. ---------- Railway issued the cash receipts which are enclosed with the statement of claim. ----- Xerox copy of the medical paper dated 09.04.2009 related to Shri Sunil Hemchand Sahare license porter. -------- Badge No. 57 is seized not from Kanta bai, but from her father-in-law namely Shri Gondu Maroti. --------- Sr. D.C.M. issues a letter to Chief Parcel Supervisor of Gondia, regarding Kantabai Sudam Kawde's application for transfer of Badge No. 57. ---------- Railway did not pay salary to all licensed porters, but they get charges directly from passengers to carrying their luggage. There is not post of parcel porter in Railway at Gondia Station."

18. I relied on following case laws:-

(i) The Senior Divisional Commercial vs. The General Secretary, Hon'ble Bombay High Court, Writ Petition No. 4472/2008 date of judgment 14 October 2009.

(ii) Smt. Aasha vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench, Writ Petition No. 1340 of 2011, date of order 23.06.2011, (D.B)

(iii) Smt. Maya vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench W.P.No. 1333/2011, date of order 20 June 2011, (D.B).

(iv) Whether Reporters of Local Papers Rajusingh Joraji vs. Senior Division Commercial Manager, Hon'ble Gujrat High Court Bench Ahmadabad, C/SCA/19944/2015, date of judgment 28 September 2017.

Hon'ble High Court laid down on following principles:-

(a) There is no dispute that the Railways carry on its business of transportation and earns huge profit from the said business, so also from transportation of passengers. It is the case of the petitioner Railways itself that they provided license to the licensed porters, recovered security deposits as well as license fee regularly, has power to cancel the license in case of misconduct or as the case may be. It has power to regulate and control the activities of licensed porters on platforms. It has power to fix the remuneration which the licensed porters can receive from the passengers. Not only that, even according to the petitioner, the licensed porter as per the exigencies are engaged to perform the work of parcel porters and that was done initially for 4 hours and thereafter 8 hours and his entire work is done upon the direction of the Railways and its officers and there is a full control over the same.

(b) The manual work is performed by the licensed porters as well as parcel porters and this is the systematic activity of cooperation between the employer and the workmen. As a matter of fact, the petitioner Railways did not lead any evidence before the tribunal to show as to how the activities undertaken by the petitioner Railways and the work required to be performed as aforesaid by the licensed porter and the parcel porters would not fall in the definition of 'Industry' and ' workman' under the Industrial Disputes Act. In the absence of any rebuttal evidence and appropriate pleading to refute the claim of the members of the respondent Union

that they are workmen, I hold that the members of the respondent Union are workmen and entitled to maintain the reference before the tribunal.

(c) Since the petitioner Railways did not fairly produce the entire material before the Tribunal, it will be appropriate to compensate the respondent Union by asking the petitioner Railways to pay costs.

(d) The issue whether members of Respondent Union are workmen or not is decided against the petitioner by me and shall not be tried by the tribunal again.

(e) Before allowing such transfer of license, it should be ascertained that the porter has the sole earning member of the family. An affidavit produced by the licensed porter under the seal of a Magistrate may be taken as adequate proof of the dependence of the family on licensed porter and the nature of relationship of the nominee.

(f) The application of any law or any rule has to be designed to doing real and substantial justice. More particularly, in interpreting and applying benevolent schemes and welfare oriented policy resolutions, the purposive approach is advocated. The function of purposive application of any rule or law HC-NIC page 6 of 10 Created on Sat Oct. 07 05:05:27 IST 2017 is to iron out technicalities in granting benefit of the provision or policy. The entitlement of the petitioner was not in dispute.

(g) There is no gainsaying that when the question is of application of any welfare scheme, the purposive construction should deservedly must be further informed by liberal approach in interpretation and application of the provisions. ----------The aim of the policy is to provide relief to the family of the porter who has become infirm or who has died, by permitting transfer of his Badge or Buckle in favour of near relatives.

(h) Senior Division Commercial Manager, Western Railway, Ahmadabad, and the reasons supplied therein are hereby set aside. It is held and declared that the petitioner is entitled to the benefit of the policy and is further entitled to be transferred the Buckle No. 163 of his grandfather Kacharaji Chaturji Thakor. The respondents are directed to transfer the said Buckle No. 163 in the name of the petitioner as he is held to be covered under the policy. The respondents are directed to give benefit to the petitioner of the policy by transferring Buckle No. 163 in his name.

19. I also relied these case laws: U.O.I. Vs. Ram Chandra Tanti WPCT Nos. 124 to 126/200 order dated 29.03.2004, National Federation of Railway Porters Vs. Union of India 1995 II LLJ 712 and A.I. Railway parcel and Goods Porters Union vs. Union of India W.P.(Civil) No. 433/1998 date of order 22.08.2003, in which, Hon'ble Lordship hold that, "One big point of difference between the two sets of porters is the fact that while one set is being paid for their services by the passengers directly, the other set is being paid for their labour by the authorities of the railway.

Now, I want to see evidence of both parties in merits, On behalf of the management Smt. K. Mangamma Rao/M.W.1 by proving Exhibit 3 documents M-1 To M-3, asserted in cross-examination following facts:- "I am not the authority to issue the license to the license porter. ---------- There is no employee employer relation between Kanta Bai and Sr. D.C.M. ---------- I can not say the exact number of license issued to the licensed porters at Gondia Station. ---------- I have no knowledge whether Kanta bai were examined by medical doctor later. ---------- There are 2 circular M-1 and M-2, regarding the transfer of badges of licensed porters." But on behalf of Workman Smt. Kanta bai asserted following facts by adducting photo identity card Exhibit W-1. "I have filed this case through the union, Parcel Porter Sanghathana. ---------- I worked in railway for three years after the death of my father-in-law. ---------- I do not know whether I have mentioned this fact in my statement of claim or not. I do not know about the statement of claim. ---------- I do not know about the contents mentioned in evidence on affidavit. ---------- It is not true to say that, the identity Card filed by me in this Court is false. ---------- That, within three years of death of my father-in-law, I did not apply to the railway to transfer the porter license in my favour."

20. Management also took an objection regarding authority of the union to file this claim. Managements witness Smt. K. Mangamma Rao, in para no. 1 of her chief-examination asserted that, the union is not registered union and no legal rights to contest this claim, She also asserted that "Union has no Locus-Standi to prefer the present statement of claim, there being no relationship as workman/employer between the allegedly made parties to the present statement ---------- Statement of claim and, therefore, the present statement of claim is Abinitio Void in law", but she did not produced any document to disprove this fact on the contrary workmen 'Kanta bai' is his chief examination asserted that she file this claim to Parcel Porter Sangathana she also asserted that she did not filed any document in this regard. On perusal of the record it appears that union filed their application under 36(4) in which registration No. NGP-4403 is mentioned. It also appears that this referenc firstly filed came before RLC for conciliation, but Party no. 1 Railway failed to conciliate the matter

before RLC. It was duty of the RLC to check the genuineness of the Union. This matter was referred from Ministry of Labour and Employment. So many cases are pending and decided by this tribunal as well as some cases decided by High Court. This Tribunal is duty bound to answer this reference. So in my humble opinion, on the basis of technicality, genuine claim cannot not be rejected.

21. Workmen Kanta bai/Pw-1 asserted in her chief examination that "despite of the Fact, that the Metal Badge obtained on payment of license fees to Railway and renewal of license regularly made" but in para no 9 of his cross-examination she admitted that she is illiterate so, she did not know English and law. On the contrary on-behalf of management Mw-1/Smt. K. Mangamma Rao admitted that she did not know workmen personally she also admitted that railway issued the cash receipts which are enclosed with the statement of claim. Receipts carry on badge no. 57. But she did not know "I am not authority to issue the license to the license porter --------- ---------- Shed also admitted that Badge no. 57 is seized not from Kanta bai, but from her father-in-law namely Shri Gondu Maroti. ---------- There are 2 circular M-1 and M-2, regarding the transfer of Badges of licensed porters. Sr. D.C.M. issues a letter to Chief parcel Supervisor of Gondia, regarding Kanta bai Sudam Kawde's application for transfer of Badge No. 57. She also asserted that there is no employee employer relation between Kanta Bai and Sr. D.C.M. She also admitted that she is not in authority to issue the license to the license porter, but D.C.M is authorized to issue badge and license of the licensed porter.

22. In my opinion, burden of proof is on workman, but onus of probandi lies on management, because member of Screening committee and Sr. D.C.M. were their own employee, but they did not examine any member of Screening committee or Sr. D.C.M. or the Parcel Chief supervisor at Gondia or Station Master or nay other witnesses, who know these facts, so adverse inference may be drawn against the management. It also appears that, Badge No. 57 of the license porter was issued in the name of her father-in-law, Dhondu Maroti Kavde. Her husband died before her father-in-law. Nothing is appearing in that case that, there is any legal difficulty to transfer the Badge No. 57 to daughter-in-law, Kanta Bai. Railway/Party No 1 disputed that, she was not informed about the death of her father-in-law in time and also raised an objection that, she is not legally entitled to transfer of the badge, but this fact was denied by the workman/union. In the above discussion, I observed that, Party No. 1, Railway did not examine the concerned person. No financial liability in appointing the workman as a license porter, because license porter gets their charges directly from the passengers for carry out the luggage. So, adverse inference can be drawn against the Party No. 1 for non-examining the concerned person. In my humble view, the workman is entitled to transfer the badge of license porter of her father-in-law. Hence, it is ordered:

ORDER

1. Smt. Kanta Sudan Kavde, License Porter is a workman.

2. The action of the management not to allow her to work even after receiving the license fee up to 13/07/2011 and sudden seizure of badge (No. 57) without any show cause is not legal and justified. Smt. Kanta Sudan Kavde is entitled to transfer of badge of licensed porter of her father-in-law, Dhondu Maroti Kavde, but she is not entitled to original badge of her father-in-law, Dhondu Maroti Kavde. Petitioner is entitled of Rs. 50,000/- (Rupees fifty thousand only) as compensation in lieu of harassment and pain and suffering. Management/Party No.1 should comply the order within one month from the date of publication of this award in official gazette, failing which, workman is entitled for interest of 6% per annum from the date of dues amount. The workman is not entitled for any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 652.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कड़कदम्मा निर्माण, प्रस्ताव श्री मौलीधरन, दुर्ग (छत्तीसगढ़) के प्रबंधतंत्र के संबद्ध नियोजकों और सचिव, इस्पात कार्यकर्ता केंद्र (एआईसीसीटीयू), दुर्ग (छत्तीसगढ़), के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/57/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.09.2021 को प्राप्त हुआ था।

[सं. एल- 26012/6/2015-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/57/2015) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of M/s. Kadakadamma Construction, Prop. Shri Maualidharan, Durg (Chhattisgarh) and The Secretary, Centre of Steel Worker (AICCTU) Durg(Chhattisgarh), which was received by the Central Government on 21.09.2021.

[No. L-26012/6/2015-IR (M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/57/2015

Present: P. K. Srivastava, H.J.S.. (Retd)

The Secretary,
Centre of Steel Worker (AICCTU)
6-G, AV-C, Sector-6,
Bhilai Nagar, District Durg
Durg (CG)-490006 ... Workman

Versus

M/s. Kadakadamma Construction,
Prop. Shri Muralidharan,
Shop No.708, C-Market,
Sector-6, Bhilai, District Durge,
Durg (CG)-490006 ... Management

AWARD

(Passed on this 26th day of August-2021)

As per letter dated 4/6/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-26012/6/2015(IR(M)). The dispute under reference relates to:

"***Whether the action of M/s. Kadakadamma Construction at Bhilai Steel Plant in terminating the services of Shri Ganesh Das, W.e.f 21-11-2014 is legal and justified?if not, what relief the workman is entitled to?*** ."

After registering the case on the basis of reference, notices were sent to the parties.

1. Inspite of notice to both the parties, none of the parties have filed their statement of claim or defense. It appears that the parties are not interested to pursue their claim/defense.

2. Hence this tribunal is constrained to decide the reference against the workman because the initial burden to prove the case lies on the workman.

3. Accordingly following award is passed:-

A. The action of M/s. Kadakadamma Construction at Bhilai Steel Plant in terminating the services of Shri Ganesh Das, W.e.f 21-11-2014 is held to be legal and justified.

B. The workman is held entitled to no relief.

4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 653.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक सहायक उपाध्यक्ष-एचआर, श्रीराम लाइफ इंश्योरेंस कंपनी लिमिटेड, हैदराबाद; प्रबंधक, श्रीराम लाइफ इंश्योरेंस कंपनी लिमिटेड, जबलपुर) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती सीमा सिंह, जबलपुर के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/53/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.09.2021 को प्राप्त हुआ था।

[सं. एल-17012/23/2019-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/53/2019) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Assistant Vice President-HR, Shriram Life Insurance Company Ltd., Hyderabad; The Manager, Shriram Life Insurance Company Ltd., Jabalpur and Smt. Seema Singh, Jabalpur, which was received by the Central Government on 21.09.2021.

[No. L-17012/23/2019-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/53/2019

Present: P. K. Srivastava, H.J.S..(Retd)

Smt. Seema Singh,
R/O 16-R Bhattacharya Ki Gali,
Opp. Jain Mandir, Shaktinagar,
Jabalpur (M.P.) ... Workman

Versus

1. The Assistant Vice president-HR
Shriram Life Insurance Company Ltd.
Plot No.31 & 32, 6th Floor, Ramkeselenium
Nr. Andhra Bank Training Centre,
Financial District, Gachibawli,
Hyderabad-500032.

2. The Manager,
M/s. Shriram Life Insurance Company Ltd.,
Bungalow No.39, 3rd Floor, Bhanwartal Garden,
Beside Gulati Plaza, Napier Town,.
Jabalpur (M.P.) ... Management

AWARD
(Passed on this 26th day of –August-2021)

As per letter dated 21-6-2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-17012/23/2019-IR(M). The dispute under reference relates to:

"Kya AvadikaSmt. Seema Singh Adyogik Vivad Adhiniyam 1947 ke adheen "karmkar" hain?yadi haan to kya prabhandan, Shriram Life Insurance Company Limited,* Gachibvawli, Hyderabad-500032.*(Telengana) Shree Ram Life Insurance Company Limited, Napier Town, Jabalpur, M.P. ke dwara Smt. Seema Singh, Bhutpurv Branch Operation Coordinator ko 1-12-2009 se 24-11-2018 tak karya mein niyojit rakhne pashchat unke sewayein denak 24-11-2018 se samapt kiye jaane ke karyavahi nyayochit hai, yadi nahi to sambhandit aavadika kes anutosh ke haqdar hai?".

1. After registering the case on the basis of reference, notices were sent to the parties.

2. Inspite of notice to both the parties, none of the parties have filed their statement of claim or defense. It appears that the parties are not interested to pursue their claim/defense.

3. Hence this tribunal is constrained to decide the reference against the workman because the initial burden to prove the case lies on the workman.

4. Accordingly, following award is passed:-

A. The action of the management in terminating the services of Smt. Seema Singh since 24-11-2018 is held to be legal and justified.

B. The workman is held entitled to no relief.

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 654.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओएनजीसी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव ग्लोरियस पेट्रोलियम मजदूर संघ, अहमदाबाद, के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 168/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2021 को प्राप्त हुआ था।

[सं. एल-30011/45/2019-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 654.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 168/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ltd., and The General Secretary Glorious Petroleum Mazdoor Sangh, Ahmedabad which was received by the Central Government on 21.09.2021.

[No. L-30011/45/2019-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 18th August, 2021

Reference (CGITA) No. - 168/2019

1. The Executive Director - Asset Manager,
M/s. ONGC Ltd., Kansari, Khambat, Cambay (Gujarat) – 388630

2. The Head Logistics,
M/s. ONGC Ltd., Kansari, Khambat, Cambay (Gujarat) – 388630

3. M/s. Metro Tour and Travels,
Hazrat Paga Road, Jibile Baugh, Vadodara (Gujarat) – 390001

4. M/s. Shree Arbuda Road Lines,
B/h Swaminarayan Mandir, Radhanpur Char Rasta,
Mehsana (Gujarat) – 384002

5. Shri Dilip Kumar Jani,
G-3, Umiya Shooping Centre, Highway,
Mehsana (Gujarat) – 384002

6. M/s. Amin Travels,
8-Yakin Shopping Centre, B/h FM Amin Petrol Pump, Rajpipla Chowkdi,
Ankleshwar (Gujarat)

7. M/s. Maruti Travels,
3-Kaveri Complex, Subhash Bridge Circle,
Ahmedabad (Gujarat) ... First Parties

V/s

The General Secretary,
Glorious Petroleum Mazdoor Sangh,
A/3, Priya Darshini Society,
Nr. New Railway Colony, Sabarmati,
Ahmedabad (Gujarat) - 380019 ... Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/45/2019-IR (M) dated 16.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand (at S. No. 1) of Glorious Petroleum Mazdoor Sangh, Ahmedabad vide letter dated 27.03.2019 to regularise the services of 92 Workers Contractual Drivers (list enclosed) engaged by contractors namely (1) M/s Metro Tour and Travels, (2) M/s. Shree Arbuda Road Lines, (3) vels, under ONGC Ltd., Cambay is proper, legel & justified? If yes, what relief these 92 workers are entitled to and what other directions, if any, are necessary in this matter?"

1. The above reference was received in this Tribunal on 27th December, 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than one year had been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 655.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओएनजीसी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, ग्लोरियस पेट्रोलियम मजदूर संघ, अहमदाबाद के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 154/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2021 को प्राप्त हुआ था।

[सं. एल- 30011/41/2019-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ltd. and The General Secretary Glorious Petroleum Mazdoor Sangh, Ahmedabad which was received by the Central Government on 21.09.2021.

[No. L-30011/41/2019-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : Radha Mohan Chaturvedi, Presiding Officer
Dated 18th August, 2021

Reference (CGITA) No. - 154/2019

1. The Executive Director - Asset Manager,
M/s. ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda, Ahmedabad

2. The Dy. General Manager,
M/s. ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda, Ahmedabad

3. The Dy. General Manager – Head Office,
M/s. Lion Manpower Solution Pvt. Ltd., Plot No. 10, 3rd Floor, LSC,
Section B-1, Vasantkunj, New Delhi - 110070

4. M/s. Lion Manpower Solution Pvt. Ltd.,
Siddhichakar Apartment, Nr. Visat Petrol Pump, Sabarmati,
Ahmedabad (Gujarat) – 380005 ... First Parties

V/s

The General Secretary,
Glorious Petroleum Mazdoor Sangh,
A/3, Priya Darshini Society, Nr. New Railway Colony, Sabarmati,
Ahmedabad (Gujarat) - 380019 ... Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/41/2019-IR (M) dated 09.12.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of Glorious Petroleum Mazdoor Sangh, Ahmedabad vide letter dated 30.10.2018 to regularise the services of Shri Ankit Ishwarbhai Rabari and Shri Chirag Pradip Kumar Shah engaged as Contract Basis Security Guards by M/s Lion Man Power Solution Pvt. Ltd., Ahmedabad (Contractor) under ONGC Ltd., Ahmedabad at ONGC Ltd., Ahmedabad is proper, legal and justified? If yes, what relief these workers, Shri Ankit Ishwarbhai Rabari and Shri Chirag Pradip Kumar Shah are entitled to?''

1. The above reference was received in this Tribunal on 16th December, 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than one year had been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2021

का.आ. 656.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक-एचआर/आईआर, ओएनजीसी लिमिटेड, अहमदाबाद; महाप्रबंधक-उत्पादन, ओएनजीसी लिमिटेड, अहमदाबाद; निदेशक, ओएनजीसी लिमिटेड, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव ग्लोरियस पेट्रोलियम मजदूर संघ, अहमदाबाद, के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद पंचाट (संदर्भ संख्या 143/2019) प्रकाशित करती है जो केन्द्रीय सरकार को 21.09.2021 को प्राप्त हुआ था।

[सं. एल- 30011/38/2019-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 21st September, 2021

S.O. 656.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 143/2019) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s The General Manager-HR/IR, ONGC Ltd., Ahmedabad; The General Manager-Production, ONGC Ltd., Ahmedabad; The Director, ONGC Ltd., Ahmedabad and The General Secretary Glorious Petroleum Mazdoor Sangh, Ahmedabad which was received by the Central Government on 21.09.2021.

[No. L-30011/38/2019-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present: Radha Mohan Chaturvedi, Presiding Officer
Dated 18th August, 2021

Reference (CGITA) No. - 143/2019

1. The General Manager – HR/IR,
M/s. ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat) – 380005

2. The General Manager – Production,
M/s. ONGC Ltd., 5th Floor, Avani Bhavan, Chandkheda,
Ahmedabad (Gujarat) – 380005

3. The Director,
M/s. Global S.S. Construction Ltd., 219-Highway Mall, Chandkheda,
Ahmedabad (Gujarat) – 382424 ... First Parties

V/s

The General Secretary,
Glorious Petroleum Mazdoor Sangh,
A/3, Priya Darshini Society, Nr. New Railway Colony, Sabarmati,
Ahmedabad (Gujarat) - 380019 ... Second Party

Present: None on behalf of Claimant(s)

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-30011/38/2019-IR (M) dated 29.11.2019 for adjudication to this Tribunal.

SCHEDULE

"Whether the demand of Glorious Petroleum Mazdoor Sangh, Ahmedabad to pay 26 days wages instead of 22 days wages to contract labour engaged by M/s Global S.S. Construction Ltd., contractor under ONGC Ltd., Ahmedabad and deployed at Water Injection Plant, ONGC Ltd., Ahmedabad is legal, fair and justified? If yes, what relief the Water Injection Plant contract labours are entitled to? What other directions, if any, are necessary in this matter?"

1. The above reference was received in this Tribunal on 09th December, 2019. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants. A period of more than one year had been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry. It is worthwhile mentioning that this reference is prior to spread of COVID-19 pandemic and adversities of lockdown.

2. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.

3. It is therefore just & proper to pass an award considering "no dispute" between the parties.

4. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2021

का.आ. 657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. दो चण्डीगढ़ के पंचाट (संदर्भ संख्या 23/2015) को प्रकाशित करती है।

[सं. एल-12012/55/2015-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 22nd September, 2021

S.O. 657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/55/2015-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 23/2015

Registered on:-03.06.2015

Sh. Chander Pal, S/o Sh. Nanhu Mal, R/o Ward No.1,
Kharkhoda, Distt. Sonepat, Haryana. ...Workman

Versus

The Branch Manager, State Bank of India, Kharkhoda,
Distt. Sonepat, Haryana. ...Respondent/Management

AWARD

Passed on:-02.09.2021

Central Government vide Notification No. L-12012/55/2015-IR(B-I) Dated 13.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of State Bank of India in terminating the service of the workman Sh. Chander Pal w.e.f. 26.03.2013 and not regularizing his service is justified? If not, what relief the workman is entitled to and from which date?"**

1. Both the parties were put to notice and claimant Chander Pal filed claim statement with the averment that he was employed in State Bank of India, Kharkhoda branch in the year 1993 and remained in service till March 26, 2013. The work and conduct of the workman was quite satisfactory and there was never any complaint against him from his superior officers. The workman worked in each year of his employment for more than 240 days. The management-bank continued to employ the workman as a daily wager even in spite of his fulfilling the conditions of regularization policies issued by the Government from time to time. The management-bank wrote a letter to the workman for police verification and after the receipt of said letter, the workman got verified his antecedents from Police Station Kharkhoda on 16.02.2011. The Field Officer of SBI Kharkhoda made a request to the employer-bank on 24.12.2011 for escorting Chander Pal Peon for effecting recovery and the above bank deputed the workman with the said Field Officer for the said purpose. The workman made several requested to the SBI Union Bank, New Delhi and Bombay for regularizing his services with the above said bank but the management-bank did not give any response to any of the genuine request of the workman. The workman had completed more than 240 days in service in the last 12 preceding months from the date of his termination as well as in each year of his employment and no retrenchment compensation was paid and one/three months advance notice issued or wages were paid in lieu thereof. The management has violated the Section 25-F and 25-N of the Industrial Disputes Act, 1947. In view of the submissions made, it is therefore prayed that the order of termination dated 26.03.2013 may kindly be set aside and the management-bank may kindly be directed to reinstate the workman with continuity and full back wages.

2. Management has filed its written statement, alleging therein that there is no there existed no relationship of employer and employee between the management and workman at any point of time. The workman was never appointed or worked as Peon as alleged and no appointment letter was ever issued to the workman. The workman was doing the work of book binder and the workman used to be called and had been doing the occasional, temporary work like binding of ledgers or stitching of vouchers etc. on piece rate basis on contract basis for some time with gap of service. As the work was on contractual basis and whenever such binding work was required, he used to do the work either from his house or in bank. The workman was on temporary daily piece rate remuneration basis and as the bank being the financial institution in which finance is involved as such everybody who work for any repair, construction or any other unauthorized person, the police verification is must to confirm that any unwanted element with criminal background may not enter n the bank and may not cause financial mishandling etc. the workman himself stopped coming and doing the piece rate work whenever required and as such, there is no question of termination. The management is a bank of Government of India and all employees are appointed as per the proper procedure and selection committee and issued the appointment letter and it is wrong that any person junior to the workman had been regularized. The workman had no right to be an employee of the bank nor ever so worked for any 240 days as alleged and he himself has stopped coming and doing the piece rate work whenever required as such, there is no question of termination. It is therefore, prayed that the claim of the workman may kindly be dismissed with heavy costs.

3. Claimant/workman Chander Pal has submitted his affidavit as Ex.WW1/A along with documents Ex.W-1 to Ex.W-7 and cross-examined by the learned counsel of the management. He has stated that he had not given any application for his appointment and he was appointed as daily wager. He has further stated that he was not paid on monthly basis salary instead he was paid weekly for the services rendered.

4. Management has submitted affidavit of witness Sushil Kumar Sharma, Branch Manager, State Bank of India, Kharkhoda, Distt. Sonepat, who submitted his affidavit as Ex.MW1/A who is cross-examined by the learned counsel of the workman. This witness has stated that he does not know about CEMTEX DEP used in banking-system and the workman was given payment through CEMTEX DEP as per the statement of the bank-account. He has accepted that management-bank has neither issued notice to the workman nor any retrenchment compensation was given because the workman was not in the bank as a regular employee.

5. I have heard Sh. Mayank Aggarwal, Ld. Counsel for the workman as well as Sh. S.K. Gupta, Ld. Counsel for the management and perused the file as well as written argument filed by the workman.

6. Before averting to the real controversy between the parties, it will be relevant to mention those facts which are admitted to cut short the controversy between the parties. The employment of claimant/workman Chander Pal from the year 1993 till the alleged termination on 26.03.2013 on daily wage basis is not disputed. It is also not disputed that workman was engaged without any advertisement, examination or rules and regulations of the bank. Thus, there is no legal appointment of the claimant/workman with the management-bank. The fact regarding the payment by the bank with respect to the services rendered by the workman is also not disputed. It is also not disputed that workman was not paid regular wages in the form of salary as he himself admitted in his cross-examination that payment was made weekly by the bank-management. There is also no dispute that workman was initially employed as book-binder but subsequently other works i.e. watchman, recovery-man or transporter were also taken from him as per the requirement of the bank and he was accordingly paid for travel allowances even medical allowance is paid by the management. Hence, there is no dispute regarding the claimant being a workman of the bank-management in the light of the judgment of Hon'ble Supreme Court in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532.***

7. In the background of above admitted facts, the real controversy lies between the parties with respect to the termination of the services of the workman as well as his regularization as is mentioned in the reference itself. Learned counsel of the management contended that the services of the workman could not be regularized as per the settled position of Law because he is not appointed by following the due procedure and rules and regulations of the bank as is admitted facts. Learned counsel further contended that management-bank is a public-sector bank and judgment of the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka and others Vs. Umadevi and others, Civil Appeal No.3595-3612 of 1999, decided on 10.04.2006***, as well as in the case of ***Jaipardandant Bharti Vs. Ram Sahai and another, 2007-1 LLJ page 429,*** makes it is clear that regularization of services of such an employee in public sector who is engaged without any substantive vacancy and without due process of Law is not permissible.

8. There is no dispute about the preposition of law on the point. Hon'ble Supreme Court in the case of ***Hari Nandan Prasan and another Vs. Food Corporation of India, 2014(7) Supreme Court cases 190*** held as under:-

> **"....We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/ad hoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible.**

In the above circumstances, giving of direction to regularize a person, only on the basis of number of backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and he workmen in question who have approached Industrial/Labour are at part with them, direction of regularization in such cases may be legally justified, otherwise non-regularisation of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."

From the above ruling, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/Policy of the management and similarly situated workmen have been regularized by the employer/management under the said Policy/Scheme and benefit of such Scheme/Policy has been declined to the other. The facts and evidence of case in hand are not supportive of above legal preposition in the absence of evidence with respect to any scheme or policy of the bank.

9. Second contention of the learned counsel of the management is that alleged dis-engagement of the workman does not come within the ambit of termination because he is not an employee of the bank-management and was working as daily wager. Under these circumstances, his dis-engagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act, 1947. As per the learned counsel of the management, the concept of retrenchment therefore, cannot be stretched to such an extent to cover the claimant as an employee of the management and protection under Section 25-F and other Sections of the EPF & MP Act are not applicable to the claimant.

10. Contrary to this, learned counsel of the workman contended that the conduct of the management amounts to unfair labour practice as well as termination amounts retrenchment in the light of the judgment of Hon'ble Supreme Court in the case of ***Bhuvnesh Kumar Dwivedi V. Hindalco Industries Ltd. Civil Appeal Nos.4883 and 4884 of 2014(arising out of SLP(C) Nos.554 and 555 of 2012), decided on 25.04.2014***. In case of ***Bhuvnesh Kumar Dwivedi(supra)***, the Hon'ble Supreme Court while dealing with a similar case as in hand has held in the light of the judgment of three Judges Bench of Hon'ble Supreme Court in ***State Bank of India Vs. Shri N. Sundara Money, AIR 1976 SC 1111***, and has held that termination of service of the workman in such cases amounts to retrenchment. The Hon'ble Apex Court has referred the relevant paragraph of ***State Bank of India Vs. Shri N. Sundara Money(supra)*** as follows:-

"A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination...for any reason whatsoever' are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It meets to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service effluxion of time cannot be sufficient." An English case R.V. Secretary of State (1973) 2ALL E.R. 103; was relied on, where Lord Denning, MR observed:

I think the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things-either to termination of notice or termination by effluxion of time. It is often used in the dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

Buckley L.J, concurred and said:

In my judgment the words are not capable of bearing, that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to

be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a Composite order one giving employment and the other ending for limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

11. It is pertinent to mention that the evidence on record shows that the period of service of the workman extended about 20 years with motive so as to retain the workman as a temporary worker and deprive the workman of his statutory right of permanent workers and status. The aforesaid conduct of the management-bank perpetuates unfair labour practice as defined under Section 2(r) of the Industrial Disputes Act, 1947 which is not permissible in view of the Section 25-T and 25-U of the Industrial Disputes Act, 1947 read with Entry at Serial No.10 in Vth Schedule of the Industrial Disputes Act, 1947 regarding the unfair labour practice. Thus, this Tribunal is of considered opinion in given facts, circumstances and Law that conduct of management about dis-engagement of workman amounts retrenchment and bank-management was under legal obligation to follow the rules enshrined in Section 25-F of the ID Act, 1947. It is not disputed that management has neither issued notice nor compensation in lieu of notice as is enshrined under Section 25-F of the Industrial Disputes Act, 1947.

12. Learned counsel of the workman contended that wages as well as other expenses like auto rickshaw charges, delivery charges, medical allowances, T.A. bills etc. are paid from bank's-account as is evident from the evidence given by the workman in his affidavit as well as documents Ex.W1 to W7 attached with the affidavit. There is no doubt that workman was paid by the bank's-account as is evident from the photocopies of the passbook attached with the affidavit as Ex.W2. It is pertinent to mention that witness of the management namely Sushil Kumar Sharma, Manager has denied during cross-examination that he is not aware with the termalogy used in the passbook of claimant as CEMTEX DEP. It is pertinent to mention that meaning of this word is explained in the dictionary i.e. **That form used by the banks when deposits are done online. These deposits are in blog and when received it will reflect as (CEMTEX DEP). For example, Government grant allowances, salaries, wages and other allowances etc.** Thus, above dictionary meaning makes it clear that workman was paid by the bank and witness of the management namely Manager Sushil Kumar Verma has tried to lie with respect to word (CEMTEX DEP) which is mentioned in passbook of the claimant.

13. Learned counsel of the workman contended that it is proved on record that claimant/workman has worked with the management from 1993 to 26.03.2013 and there is no legal show cause notice or charge-sheet issued to the workman. Learned counsel of the management contended that there is no evidence on record to prove that workman has rendered 240 days from the preceding year from the alleged termination as such, Section 25-F of the Industrial Disputes Act, 1947 is not applicable with the case. Learned counsel of the workman contended that relationship of employer and employee is admitted and payment made by the bank-management for the service rendered by the workman is also not disputed. In the light of the proven facts and circumstances, burden lies on the management to prove that workman has not rendered his services for 240 days with the management in the last preceding year of his retrenchment. Moreover, learned counsel of the claimant/workman has drawn my attention towards the payment made by the bank to the workman through his Photostat copies of the passbook in which payment has been made by the bank in the account of the workman. Learned counsel of the workman contended that it is only possible when workman has rendered regular services for the year. Hence, burden lies on the management to explain and prove about the payment made to the workman and the nature of its works. I am of the considered opinion that the contention of the learned counsel of the claimant/workman has force at least with respect to the payment of more than one lac in the corresponding year of the alleged termination and management has not whispered about the work for which such a payment is made by the bank-management either orally or through any documents. In this scenario and evidence on record, I am satisfied that it is only possible when workman has rendered at least 240 days service in the preceding year of his retrenchment. In this background and evidence on record, it is crystal clear that management-bank has retrenched the workman with highhandedness without giving notice or retrenchment compensation and he is penalized for no fault and was force to leave the job without any fault.

14. Contrary to this, learned counsel of the bank-management contended that workman is not entitled for reinstatement as he is daily wager, and there is nothing in the pleading as well as evidence that workman was not employed during post-retrenchment period as such, he is not entitled for reinstatement or compensation as per law. Learned counsel of the bank-management has placed reliance in the case of judgments of the Apex Court rendered in the cases of ***Rashtrasant Tukdoji Maharaj Technical Education, Sanstha, Nagpur v. Prashant Manikrao Kubitkar, (2018) 12 SCC 294; District Development Officer and another vs. Satish***

Kantilal Amrelia, (201`8) 12 SCC 298; Dharamraj Nivrutti Kasture vs. Chief Executive Officer and another, (2019)11 SCC 289; and State of Uttrakhand and another vs. Raj Kumar, (2019) 14 SCC 353.

15. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workman has worked with the management-bank from the year 1993 to 26.03.2013. There is no legal show cause notice or charge-sheet issued to the claimant/workman by management-bank. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. In our considered opinion, the case at hand is covered by the two decisions of the Supreme Court ***Deputy Executive Engineer vs Kuberbhai Kanjibhai on 7 January, 2019*** as well as the judgment of ***Bharat Sanchar Nigam Limited vs Bhurumal And Another*** and the latest judgment of the Supreme Court of in case of ***Madhya Bharat Gramin Bank vs. Panchamlal Yadav, 2021 LLR 681, dated 13.7.2021.*** It is necessary to reproduce what the Hon'ble Supreme Court in case of ***BSNL vs. Bhurumal, (2014) 7 SCC*** held in Para 33-35:-

> ***"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious".***
>
> ***34. "The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.***
>
> ***35. "We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."***

16. The Hon'ble Supreme Court in case of ***Madhya Bharat Gramin Bank vs. Panchamlal Yadav dated 13.7.2021,*** has considered status of daily-wager and is opined that in such cases, compensation will be the remedy instead of reinstatement. Perusal of file reveals that, workman has not stated anything with respect to his post-retrenchment engagement in pleading as well as affidavit filed as evidence. But, it is not disputed that he has rendered services for more than 20 years with the bank-management and in such circumstances, it would be relevant to award compensation instead of reinstatement as is claimed by the workman. Looking the nature of services and the time devoted by the workman with the management-bank, I am of the considered opinion that workman is liable for compensation of Rs.8 lac only and management-bank is directed to pay compensation within 3 months from the date of notification of the award. Hence, award is answered accordingly.

17. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 23 सितम्बर, 2021

का.आ. 658.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 36/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.09.2021 को प्राप्त हुआ था।

[सं. एल-22012/68/2009-आईआर (सीएम-2)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 23rd September, 2021

S.O. 658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. W.C.L and their workmen, received by the Central Government on 20.09.2021

[No. L-22012/68/2009-IR(CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/36/2010

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Bharat Singh Sakrawar,
General Secretary,
Sanyukta Koyala Mazdoor Sangh (INTUC),
Iklehra,
Chhindwara (M.P.) ... Workman

VERSUS

The Chief General Manager,
WCL,
Pench Area, P.O. Parasia,
Chhindwara (M.P.) ... Management

AWARD

(Passed on this 25th day of August-2021)

As per letter dated 7/6/2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/68/2009_IR(CM-II). The dispute under reference relates to:

> "***Whether the action of the management of M/s WCL in not providing employment to Shri Rajkumar, the son of deceased workman namely Shri Bhondal on compassionate ground is legal and justified? To what relief the claimant is entitled for .***"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman was represented by the Union which has stated in its statement of claim that deceased Bhondal was working with the Management and died during employment on 12-12-2002. He left his widow Janak Dulari and a son Rajkumar as his legal heir and successor. The widow of deceased workman filed an application before Management for engaging son Rajkumar on compassionate basis. She was informed by Management vide letter dated 13-7-2006 that there was some discrepancuy regarding the age of Rajkumar and since he was more than 35years of age on the date of application, he could not be engaged on compassionate basis as per rules.

3. According to the Union, Rajkumar was less than 33 years of age at the time of death of his father. It is further alleged that the management committed illegality in not appointing Rajkumar on compassionate basis on the basis of his age, accordingly the Union raised a dispute before the Assistant Labour Commissioner. A reference was sent to this Tribunal for adjudication after failure of conciliation. The workman has prayed for direction to the Management to appoint Rajkumar, son of deceased workman on compassionate basis.

4. According to the Management, after death of the workman, his widow did not come forward for relief provided under Chapter IX of National Coal Wage Agreement(NCWA), rather claimed compassionate appointment for her son Rajkumar. As per the documents submitted by applicant, his date of birth was recorded as 1-6-1972. According to Clause 9.3.4 the age of claimant should not be more than 34 years at the time of seeking appointment, hence in the light of this provision, the claim of the claimant was found not maintainable and was communicated to him vide office order dated 13-7-2006. It is also pleaded that the claimant did not taken any action for years together and raised a dispute through Union in the year 2010. The widow of the workman, who had the first right to claim relief under the provisions, did not come forward to claim employment or monthly monetary compensation as provided as per Rules, hence she was not granted any monthly monetary compensation. Accordingly, it has been prayed that the reference be answered against the workman.

5. The workman has filed and proved letter of Management dated 13-7-2006 and birth certificate (both copies)as Exhibit W-1 and W-2 respectively. The workman side has filed affidavit of the widow of the workman. The workman side has further examined Rajkumar on oath who has been cross-examined by Management.

6. The Management has examined Manager Personnel Shri P.Subramani who has been cross-examined by workman side.

7. I have heard arguments of Mr. Mahendra Chatterjee, Union Representative on behalf of workman and Shri A.K.Shashi, learned counsel for the Management and have gone through the record as well.

8. <u>The Reference is the point for determination ,in the case in hand.</u>

9. The only point to be determined, in the case in hand is whether the applicant Rajkumar was disqualified for appointment on compassionate ground because he was of 35 years of age or more at the time of the application for compassionate appointment.

10. Reference to **<u>Clause 9.3.4 of Chapter IX of National Coal Wage Agreement</u>** is required to be referred, which is as follows:-

> **"The dependents to be considered for employment should be physically fit and suitable for employment and age not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment."**

11. Thus it is clear from the Rule mentioned above that the application must not be or more than 35 years of age at the time of application. In his statement of oath the workman has admitted that his mother has got mentioned his date of birth in his birth record. He is not sure whether he was more than 35 years of age at the time of application.

12. On the other hand, the Management witness has corroborated the case of Management, as mentioned in its statement of defense and has stated that since the applicant was of more than 35 years of age at the time of application , as per records submitted by him with the application for compassionate appointment, he was not given any appointment as per Rules. He further stated that the widow of the deceased workman did not file any petition for getting monthly compensation, as per rules.

13. Hence on the basis of the above discussion, it is established that there is nothing on record to prove that the applicant was below 35 years of age at the time of his application for compassionate appointment. Accordingly, he was rightly refused compassionate appointment and the action of Management in this respect cannot be said to be unjustified in law and fact.

14. The relevant rules for compassionate appointment/payment of monthly monetary compensation to dependent are prescribed in rules 9.3.0 to 9.5.0. The relevant 9.4.0(iv) is being reproduced, which is as follows:-

<u>Provision of Employment/Payment of Monthly Monetary Compensation to Dependent</u>

"9.1.0.....

9.2.0.....

9.3.0.....

9.4.0(iv):- the monthly monetary compensation payable to the female dependent in case of death either in Mine accident or for other reasons or medical unfitness of the employee shall be @Rs.6000/- with effect from 1-5-2008/."

15. Before parting, as referred above, it is to mention here that Chapter IX of National Coal Wage Agreement also provides for monthly monetary compensation to the widow of the deceased, in case appointment on compassionate ground is not offered to the legal heir/successor of the deceased worker. The rules do not prescribe any period of limitation for a widow to avail this monthly monetary compensation. In the case in hand, the widow first filed petition for compassionate appointment which was refused, thereafter cause for filing petition for monthly compensation arises. Accordingly, the widow has an option to file a petition for monthly monetary compensation as per Rules and the Management is under legal obligation to consider it and provide her monthly monetary compensation, as per Rules.

16. On the basis of the above discussion, following award is passed:-

"A. The action of the management of M/s. WCL in not providing employment to Shri Rajkumar, the son of deceased workman namely Shri Bhondal on compassionate ground is held to be legal and justified.

B. The widow of the deceased workman is held entitled to get monthly monetary compensation as per Chapter –IX of National Coal Wage Agreement.

C. No order as to costs."

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 सितम्बर, 2021

का.आ. 659—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 77/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.09.2021 को प्राप्त हुआ था।

[सं. एल-22012/208/2004-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 23rd September, 2021

S.O. 659.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 20.09.2021.

[No. L-22012/208/2004-IR(CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/77/2005

Present: P. K. Srivastava, H.J.S..(Retd)

The RKKMS
(Now Rashtriya Colliery Mazdoor Congress)
Chirimiri Area,
Korea (Chhattisgarh) ... Workmen

Versus

The Sub Area manager,
Chirimiri Colliery of SECL
PO Chirimiri,
Korea (Chhattisgarh) ... Management

AWARD

(Passed on this 27th day of August-2021)

As per letter dated 2-8-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/208/2004-IR(CM-II). The dispute under reference relates to:

"***Whether the action of the Sub-Area Manager, Chirimiri Colliery of SECL in not protecting the pay of Sh. Jagbandhu and 80 Others, who were converted to time rated from piece rated is legal and justified?If not, to what relief the workmen are entitled?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workmen Union as stated in their statement of claim is that the workmen Jagbhandu & 80 Others as mentioned in the list annexed to the reference were firstly working as piece rated worker with the Management. A notice was issued by the Management on 25/27-1-2000, whereby it was intimated that the piece rated worker who were willing to work underground could prefer their application for this. The workmen filed their application and vide order dated 9-10-2000 they were transferred from Chirimiri Colliery where they were working as Piece rated workers to Raigarh area and were posted as Time rated worker, in different placed in Raigarh area vide order of Management dated 4-11-2000. They have filed an application with Management on 30-10-2000 wherein they stated that as per the discussion held with the Management and the assurance given by Management , they are entitled to be given last basic of relevant category and SPRA and getting their pay protected after adding these benefits on their conversion from Piece rated worker to Time rated worker. They made continuous representations through Union on different dates as mentioned in their statement of claim. The Management granted the relief to some extent vide its order dated 6-11-2004 on the basis of Circular dated 17-2-1995 but the protection of pay granted by the Circular of Management dated 6-11-2004 was incomplete as it was not granted to them from the date of their conversion from Piece rated worker to Time rated worker, rather it was granted from the date of circular dated 6-11-2004. The case of the workmen is further that since there conversion from Piece rated worker to Time rated worker in October and November-2000, they were continuously working as Time rated Worker till date. Their conversion was approved by the Competent Authority, vide Order No.1842 dated 6-8-2002. It is also stated that the workmen opted this conversion on invitation of the Management which was as an administrative exigency and not on the request of the workmen. Hence according to the workman Union, they were entitled to pay protection from the date of their conversion which is October/November-2000 and not from 6-11-2004. Hence they are entitled to get the arrears of protected pay as per the circular between October/November-2000 and November-2004. Accordingly the workman Union has prayed that the workmen whose name figure in the annexed list to the reference be granted the relief accordingly.

3. The case of the Management is mainly that firstly the reference is vague, hence incapable of being adjudicated, secondly it is highly belated hence not maintainable. Apart from this, the Management has pleaded that the workmen were first deployed as Piece Rated Worker, when there was no work of excavation due to modernization of mines, they were offered alternate appointment as Time Rated Worker, if they opted for this. According to the management, there is no provision either in National Coal Wage Agreement or Standing order to grant pay protection where conversion takes place due to surplus manpower or want of job provided to the Piece rated workers. The claimant /workmen were firstly working as Piece rated worker in Chirimiri area, since the Management did not have any work to offer to these Piece Rated Workers, they were given an option of conversion into Time Rated Worker by submitting a written option in form of an application to the Management. The conversion took place with the consent of the workmen. They did not raise any objection against conversion. Though there is no provision in National Coal Wage Agreement and Standing Orders to grant pay protection in such a case, the Management, after sympathetically considering their representation granted pay protection from the date of their deployment and were paid the difference accordingly. Hence, according to the Management, the claimants have already been granted pay protection from the date of deployment and were paid the arrear payments. Accordingly, the Management has prayed that the reference be answered against the workmen.

4. The workman Union has filed photocopy of general notice dated 25/27-1-2000 notifying for submission of applications through proper channel for conversion from Piece rated Worker to Time Rated Worker. The photocopy of letter dated 6-11-2004 regarding protection of wages in the light of circular dated 17-2-1995, photocopy of order dated 6-8-2002 regarding approval of conversion of the workmen mentioned in the order from Piece rated worker to Time rated Worker all admitted by Management and marked as Exhibit W-1 to W-4 respectively. The Management has further filed photocopy of application, filed by the Union on 30-

10-2000 regarding claim of pay protection. The workmen Union has further examined its witnesses- workmen Somnath, Jagbhandu, Pardesi and Salim Bux. Three of them have been cross-examined by Management.

5. The Management has examined Senior Clerk Devideen Kashyap who has been cross-examined by workmen Union and has proved the difference payment chart as Exhibit M-1 and Exhibit M-2.

6. None was present from the side of the workmen Union at the time of arguments, hence the arguments of learned counsel Shri A.K.Shashi for Management were heard by me. The Workmen Union did not prefer to file any written arguments. I have gone through the record.

7. The Reference itself is the point of determination, in the case in hand.

8. The moot point for consideration, in the case in hand is whether the workmen are entitled to get pay protection from October/November-2000 or not ?

9. The case mainly rests on documents. The Circular of Management dated 17-2-1995 is relevant in this respect. The relevant provisions of the circular are being reproduced as follows:-

> **"Sub:- Pay Protection in case of Piece rate workers on conversion or regularization to Time-rated/Daily rated/Monthly rated.**
>
> .....
>
> ***1.*** **It was decided that the cut off date for the purpose of fixation of pay of piece rated workers working in time rated and monthly rated will be 1.1.1994.**
>
> **2. The SPRA paid to such employee till they worked in PR job prior to their conversion will be taken in to consideration at the time of fixation in time rated and the same will be treated as basic(i.e. group wages and SPRA). However, if such of the conversion cases prior to 1-1-1994 where the workmen are placed in category/scale, the SPRA applicable to the individual at the time of their conversion shall be taken in to account for the purpose of fixation of basic pay, but shall not apply to such cases where the workmen have opted for conversion."**

10. This Circular is Exhibit W-3. Exhibit W-4 is the Office Order dated 6-8-2002 regarding approval of conversion of these workmen from Piece Rated Worker to Time Rated Worker.

11. The case of Management is that the pay of these workmen has been protected since the date of approval. This has been so stated by the Management witness and is further corroborated by statement of pay mentioned in Exhibit M-1 and M-2, proved by the Management witness.

12. The workmen witnesses have stated that they were converted to Time Rated Worker in October/ November-2000. Firstly there is no document regarding this respect, secondly the approval of conversion was granted on August-2002, hence till this conversion was approved by Management, the workmen cannot be said to be approved Time Rated Worker and could not held entitled to any pay protection in the light of Circular dated 17-2-1995 referred above till their conversion was approved by Management. Exhibit M-1 and Exhibit M-2 further state that the pay of these workmen has been protected and they have been paid the arrears.

13. Hence on the basis of the above discussion, the workmen cannot be held entitled to pay protection since October/November-2000. Accordingly the action of Management in not protecting the pay of the workmen who were converted from Piece Rated worker to Time Rated worker from October/November-2000, cannot be held unjustified in law.

14. On the basis of the above discussion, following award is passed:-

> **A. The action of the of the Sub-Area Manager, Chirimiri Colliery of SECL in not protecting the pay of Sh. Jagbandhu and 80 Others, who were converted to time rated from piece rated cannot be held unjustified in law.**
>
> **B. The workmen are held entitled to no relief.**

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 सितम्बर, 2021

का.आ. 660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 61/2007) को प्रकाशित करती है।

[सं. एल-12012/81/2007-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 23rd September, 2021

S.O. 660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/81/2007-IR(B-1)]

D. GUHA, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

सी.जी.आई.टी. प्रकरण सं. 61/2007 Reference No. L-12012/81/2007-IR (B-I)

Dated:10.9.2007

जनरल सेक्रेटरी, राजस्थान स्टैट बैंक एम्पलाइज वेलफेयर फोरम, (रजि.),
C/o चतुर्वेदी भवन, इन्दिरा कालोनी, अलवर (राज.)। ...प्रार्थीगण

बनाम

सहायक महा प्रबन्धक, भारतीय स्टैट बैंक, रीजन– IV,
5-नेहरू पेलैस टोक रोड, जयपुर। ...अप्रार्थी/विपक्षी

उपस्थितः–

प्रार्थी की तरफ से : कोई उपस्थित नहीं।

अप्रार्थीगण की तरफ से : कोई उपस्थित नहीं।

: **अधिनिर्णय** :

दिनांक : 05.02..2021

1. श्रम एवं नियोजन मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 10.09.2007 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु संदर्भित किया गया :–

> "Whether the action of the Management of State Bank of India through AGM, Jaipur in not giving salary and other service benefits to Sri Daluram, Messenger w.e.f. January 1996 to December 2003 vide management's order dated 27.12.2003 after acquittal in criminal case by the Hon'ble High Court is legal and justified? If not, to what relief the workman is entitled to and from which date? ''

2. इस विवाद के प्राप्त हाने पर उभयपक्ष को आहूत करते हुए प्रार्थी को निर्देश दिया गया कि वह अपने दावे का अभिकथन प्रस्तुत करें। दिनांक 11.11.2009 को प्रार्थी ने अपने दावे का कथन प्रस्तुत किया जिसमें यह कहा गया कि वर्ष 1994 में जब प्रार्थी विपक्षी की महल चौक अलवर शाखा में नियुक्त था तब उसके विरूद्व एक प्रथम सूचना दर्ज हुई परिणाम स्वरूप प्रार्थी डालूराम को गिरफ्तार किया गया। A.D.J. No.-1, अलवर द्वारा डालूराम को दोष सिद्व एवं दण्डित किया गया। जिस पर बैंक ने प्रार्थी की सेवा जनवरी 1996 से समाप्त कर दी। न्यायालय के निर्णय के विरूद्व डालूराम ने उच्च न्यायालय में अपील प्रस्तुत की और 23.11.2001 को प्रार्थी को दोष मुक्त कर दिया। इस पर प्रार्थी ने बैंक से पुनः सेवा में वहाल करने हेतु प्रार्थना पत्र दिया जिसे स्वीकार कर बैंक ने खेड़ली शाखा में प्रार्थी को 27.12.2003 को पद स्थापित किया किंतु बैंक ने शास्त्री अवार्ड के अनुच्छेद 505 का गलत अर्थान्वयन करते हुए प्रार्थी को विगत वेतन के

भुगतान हेतु अधिकृत नहीं माना। अतः वाद स्वीकार कर विपक्षी बैंक को आदेशित किया जावे कि जनवरी 1996 से 27 दिसम्बर 2003 तक प्रार्थी को वेतन व सभी सेवा लाभ प्रदान करें।

3. विपक्षी ने 15.09.2011 को प्रार्थी के कथनो का विरोध करते हुए मुख्यतः यह कहा है कि प्रार्थी को सेवा में पुनः पदस्थापित करते समय 27.12.2003 को यह निर्देश दे दिया गया था कि प्रार्थी को विगत वेतन और परिणामिक लाभो को प्राप्त करने का अधिकार नहीं होगा। फिर भी प्रार्थी ने इन शर्तो को स्वीकार कर कार्यभार ग्रहण किया। प्रार्थी, बैंक की सेवा शर्तो और नियमो से आबद्व हैं। विगत वेतन ओर परिलाभो का भुगतान, प्रार्थी द्वारा कोई कार्य विवादित अवधि में न किये जाने से देय नहीं है। अतः वाद निरस्त किया जावे।

4. इस विवाद की सुनवाई के दौरान दिनांक 19.11.2018 को प्रार्थी के प्रतिनिधि श्री सी. डी. चतुर्वेदी ने सूचित किया कि प्रार्थी डालूराम की मृत्यु हो चुकी है तथा मृतक कर्मकार के विधिक प्रतिनिधियो को अभिलेख पर लाने हेतु वह प्रार्थना पत्र प्रस्तुत करना चाहते है। इस निवेदन को न्यायहित एवं मानवीय आधार पर स्वीकार कर प्रार्थी के विधिक प्रतिनिधियो को अभिलेख पर प्रत्यास्थापित करने का अवसर दिया गया। तत्पश्चात दिनांक 11.02.2019, 01.05.2019, 28.08.2019, 26.12.2019, 14.07.2020, 10.09.2020 व 01.12.2020 को मृतक प्रार्थी की ओर से उसके विधिक प्रतिनिधियों को संयोजित करने का अवसर दिया गया। दिनांक 28.08.2019 को श्री सी. डी. चतुर्वेदी जो कि मृतक डालूराम के प्रतिनिधि रहें हैं उन्होनें यह सूचना दी कि मृतक डालूराम के परिजनो ने इस विवाद में पक्षकार बनने हेतु कई बार स्मरण कराने पर भी उनसे सम्पर्क नहीं किया हैं। इस स्थति में यह स्पष्ट हो गया है कि मृतक डालूराम की मृत्यु हो जाने के उपरांत उसके विधिक प्रतिनिधिगण/परिजन इस विवाद में संयोजित नहीं होना चाहते हैं या वे विपक्षी बैंक से प्रार्थी के कृते कोई अनुतोष प्राप्त करने के इच्छुक नहीं है।

5. इस स्थति में जबकि प्रार्थी की ओर से वाद के अग्रसरण हेतु कोई उपस्थित नहीं हो रहा है इस अधिकरण का यह सुविचारित अधिमत है कि उभयपक्ष के मध्य अब कोई विवाद अस्तित्व में नहीं है और न ही इस अधिकरण द्वारा न्यायनिर्णयन किये जाने हेतु शेष रहा है।

अतः भारत सरकार के श्रम मंत्रालय द्वारा संदर्भित उपर्युक्त औद्योगिक विवाद का निस्तारण "पक्षकारो के मध्य कोई विवाद नहीं" शीर्षक के अर्न्तगत किया जाता हैं। पंचाट की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावें।

पंचाट आज दिनांक 05 फरवरी 2021 को लिखा व हस्ताक्षरित किया गया।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 661.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 9/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.09.2021 को प्राप्त हुआ था।

[सं. एल-22012/128/2013-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 23.09.2021.

[No. L-22012/128/2013-IR(CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/9/2017

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Vishnu Prasad
S/o late Shri Bhagwandin Tiwari,
Gram Bhagta, P.O. Behrabandh, Bijuri
District Anooppur.
Bijuri-484440 ... Workman

Versus

The Sub Area General Manager
Bijuri Sub-Area, Hasdev Area,
SECL, Bijuri (M.P.)-484440 ... Management

AWARD

(Passed on this 27th day of August-2021)

As per letter dated 9-1-2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/128/2013/IR(CM-II). The dispute under reference relates to:

"(a). ***Whether Mr. Vishnu Prasad was working as SDL Helper or Conveyor Belt Operator at the time of his retirement?"***

(b) Mr. Vishnu Prasad retired on 30/11/2012. He raised his dispute on 16/5/2013 challenging his retirement. What is the correct date of birth of Mr. Vishnu Prasad?

(c) Whether the dispute raised by Mr. Vishnu Prasad regarding alternation of his date of birth after his retirement falls under Section 2(A) of Industrial Disputes Act,1947, or not? ."

(d) *Whether the dispute raised by Mr. Vishnu Prasad regarding alternatuion in his date of birth after his retirement is justified , valid and legal or not? If not what relief he is entitled for?".*

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that he was first appointed on 22-11-1978 in Bijuri Colliery as Line Mazdoor . His date of birth as mentioned in his Higher Secondary School Certificate produced before the management at the time of his appointment was mentioned as 1-8-1957 and in his service record Form-B also contained this date of birth. He was issued a letter of Management on 1-6-2012 the details mentioned in Para-7 of the claim informing him about his superannuation on 30-11-2012. On inquiry , he was informed that though his date of birth was mentioned in his service record as 1-8-1957 but since his age was mentioned in his record as 26 years at the time of his first joining, he was to be retired on 30-11-2012. He filed a writ petition before Hon'ble High Court which was W.P.No.10520/2012(s) which was disposed vide order dated 1-8-2012, granting liberty to the workman to put his case before Age Determination Committee which wrongly discarded his Higher Secondary School Certificate mentioning his date of birth as 1-8-1957 and wrongly held his age as 26 years at the time of his first joining, as mentioned in his service record. It is the case of the workman that he was never given any intimation regarding the change of his date of birth in his service record, which is against law and is arbitrary. Accordingly, the workman has prayed that his retirement on the basis of his age be set aside and he be deemed to be in service till the date of his superannuation, after attaining the age of 60 years counting it from 1-8-1957, the date of birth mentioned in his service record and Higher Secondary School Certificate. Accordingly, he further prayed that he be granted all the benefits deeming him to be in continuous service.

3. The case of Management is that the workman was employed as Badli Loader on 22-11-1978 as his age was recorded as 26 years on that date, on the basis of information provided by him, the Form-B was filled in accordingly. The workman never produced his Higher Secondary School Certificate and never raised any objection regarding his age, hence the action of Management is legal and proper. Accordingly the Management has prayed that the reference be answered against the workman.

4. During pendency of this case, the workman filed an application through his learned counsel, wherein he stated that he does not want to pursue his case and does not want to lead any evidence. He requested that the reference be decided accordingly. The Management also did not produce any evidence.

5. The initial burden to prove his claim is on the workman. He has not filed any evidence. He never appeared in the witness box, hence this Tribunal is constrained to hold his claim not proved and held him entitled to no benefits.

6. The reference is answered accordingly.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण –सह - श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 19/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.09.2021 को प्राप्त हुआ था।

[सं. एल-22012/01/2016-आईआर (सीएम-2)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2016)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubneshwar as shown in the Annexure, in the industrial dispute between the Management of M/s M.C.L and their workmen, received by the Central Government on 20/09/2021.

[No. L-22012/01/2016-IR(CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present: Sri B. C. Rath. LL.B.,Presiding Officer,
Central Govt. Industrial Tribunal-cum- Labour
Court, Bhubaneswar.

I.D. Case No. 19 of 2016
This the 22nd day of December, 2020

Between:-

The Chairman & Managing Director
Mahanadi Coalfields Limited,
At/P.O. Jagruti Vihar, Burla,
Sambalpur-756020 ... 1st Party Management

-Versus-

The Divisional Secretary,
INMOSSA, MCL Zone, At Central Colony,
Sector-16, Block No. 6 P.O Balanda-759116.
District-Angul, Talcher, (Odisha) ... 2nd Party Union

Counsels:-

For 1st Party Management : Sri B. Das

For the 2nd Party Union : Self

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No.22012/01/2016-IR(CM-II) dated.10.03.2016 in exercise of powers conferred by clauses(d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (here in after referred to as "the Act") and the terms of reference reads as follows:-

> "Whether not allowing travelling allowance and salary for the day to the representatives of the Association for attending cases relating to industrial disputes outside the headquarter is justified? If not, what relief the Association is entitled to ?''

2. The case of 2nd party Union is that it being a registered Union the office bearer is to require to attend conciliation proceedings before the labour machinery and in the matter of references pending for adjudication before the Tribunal. It was a practice of allowing the office bearer of the Union to attend such conciliation proceedings and references conducted outside the jurisdiction of the Head Quarter. Such duty of attending the proceeding relating to industrial dispute by the officer bearer of the Union is being treated as official duty and thereby the representatives of the Union attending the labour machinery or Tribunal are entitled to T.A, D.A. and Off Duty facility. The office bearer of the Union was sanctioned and Paid T.A and D.A. for such duty till August, 2014. As the 1st Party Management did not pay the salary/wages. T.A./D.A etc. After August, 2014 for such attendance of the Union bearers a dispute was raised before the labour machinery. Conciliation proceeding before the labour machinery having failed the reference is made for adjudication of the dispute as mentioned in supra.

3. The 1st party management has resisted the claim taking a stand that neither the standing order of the company nor the T.A. Rules permits the office bearer of any Union of the employees to attend the conciliation proceeding or adjudication process on behalf of the association at the cost of Management Committee. As T.A. Rules do not allow sanction of T.A. and D.A. for work of the Association outside the jurisdiction of the Head Quarter of an employee, Travelling Allowance and other facilities is not extended tot he office bearers of the Union after August, 2014 when it came to the knowledge of the Management that on earlier occasion T.A.& DS facility was extended to the office bearers inspite of no such provision available either in the standing order or in the T.A. Rules. Hence, prayer is made for rejection of the claim statement.

4. On the aforesaid pleadings of the parties the following issues have been settled for adjudication of the dispute.

Issues

1) Whether the reference is maintainable?

2) Whether not allowing travelling allowance and salary for the day to the representatives of the association for attending cases relating to industrial disputes outside the head quarter is justified?

3) If, not, what relief the Association is entitled to ?

5. To establish its claim the 2nd Party Union has examined its Dy. General Secretary as W.W.1 and filed copy of particulars of attendance in the conciliation proceedings and in the references pending before the Tribunal, list of dates on which he attended conciliation proceedings or references for which Travelling Allowances etc. are not paid to him inspite of he being office bearer of the Union, copies of letters and references and copy of rejoinder dated 12.08.2012 of the 1st Party Management and rejoinder of the Union dated 7.10.2014, which are marked Ext.1 to Ext.9. On the other hand the Management has examined its Senior Manager as M.W.1 and relied upon the Coal India Travelling Allowance Rule, 2010 marked as Ext.A to refute the claim of the Union.

FINDINGS

6. All the issues are taken up together for consideration simultaneously for the sake of convenience. The oral testimony of W.W.1 in his examination in chief is a reiteration of the pleadings advanced in the claim statement.

But, in his cross examination he has admitted that Clause-5 of T.A D.A Rules of Coal India provides when an employee is entitled to T.A. It is admitted by him that as per the said clause an employee travelling on company's duty is entitled to T.A. The witness on being questioned whether duty on behalf of the Union is a duty of company, he denied to have any knowledge in that regard. It is admitted by him that he is not allowed to attend the Tribunal or Labour Machinery on behalf of the Union at the cost of the 1st Party Company. On a close reading of the provisions of the T.A.. Rules it is found that TA & D.A. facility is only available to an employee for company's duty. The practice of sanctioning of T..A. and D.A. to the office bearer of the Union for Union work cannot make the 1st party Management to accept the claim in absence of any specific circular, or decision of the Management. There is also no settlement between the parties for providing such facility to office bearers of the recognized Union. Therefore, refusing travelling allowance and salary/wage for the day to the representatives of the Union for attending cases on behalf of the Union relating to industrial dispute outside the head quarter cannot be said to be illegal or unjustified. Any relaxation in this regard by the officers of the Management on earlier occasion cannot confer any right to the representatives of the Association/Union has no merit for consideration.

Accordingly the referenced is answered.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. दो चण्डीगढ़ के पंचाट (संदर्भ संख्या 23/2018) को प्रकाशित करती है।

[सं. एल-12025/02/2021-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -II,Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12025/02/2021-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.23/2018

Registered On:-31.10.2018

Sushil Kumar S/o Sh. Raghubir Singh, R/o H.No.54, University Vihar, Vidya Nagar, District Hissar. ... Workman

Versus

1. The Deputy General Manager, State Bank of India. Zonal Office, Rohtak.
2. The Assistant General Manager, Regional Business Office, State Bank of India. Sector-14, District Hisar.
3. The Chief Manager, State Bank of India, Railway Road, Hissar.
4. Assistant General Manager (Personnel), State Bank of India (Formerly State Bank of Bikaner & Jaipur), Local Head Office, Tilak Marg, C-Scheme, Jaipur-302005.

5. Chief General Manager, State Bank of India
(Formerly State Bank of Bikaner & Jaipur), Local Head Office,
Tilak Marg, C-Scheme, Jaipur-302005. ... Responents/Managements

AWARD

Passed On:-01.09.2021

1. The workman Sushil Kumar has directly filed this claim petition under Section 2-A of the Industrial Dispute Act 1947(hereinafter called the Act) for his reinstatement in service with full back wages along with all consequential benefits with interest.

2. Claimant Sushil Kumar has stated in his claim petition that he was appointed by respondent no.3 Bank-employer in the month of May, 2008 after following the proper procedure strictly in consonance with Article 14 and 16 of the Constitution of India as full time Sweeper without any appointment letter and thereafter, the work of Peon/Daftri was being taken from the workman till his termination on November, 2017. The claimant/workman was drawing a salary of Rs.7,000/- per month when the services of the workman was terminated. After appointing the workman, the management had transferred his services through service provider in an illegal manner and without informing the workman and when the workman disputed then the management being in dominant position, asked the workman that the conditions are acceptable to him. The workman was left with no alternative but to surrender and accept his services through service provider. Management paying the other expenses like Auto Rickshaw Charges for bank work i.e. Dak Delivery, Fax repair, Loan Notice Delivered, purchase of stationary etc. to the workman directly in his bank-account. Management-bank generated ID of the workman as SUSH1282822 as sub-staff employee and reimbursed TA bills, auto rickshaw charges etc. The case of the workman was also sent for regularization of his service by the management but the same was not finalized by the bank. The State Bank of Bikaner & Jaipur was merged with the State Bank of India w.e.f. 1st October, 2017, and then from 1st October, the branch was merged with another branch on Railway Road, Hisar and the staff of the State Bank of Bikaner & Jaipur also took over by the State Bank of India except the workman for the reason best known to the management and by taking the benefit of the service of workman through service provider, he was simply asked not to come to Bank w.e.f. November, 2017. The workman had 9 years of unblemished service with the management before he was orally terminated from the job in the month of November, 2017 without assigning any reason and also without issuing any charge-sheet, enquiry or following the principal of natural justice and without paying any retrenchment compensation. The termination of the workman is illegal, against the principal of natural justice, unfair labour practice, violation of Minimum Wages Act and in violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is therefore, respectfully prayed that the workman may kindly be reinstated in service with full back wages along with all consequential benefits with interest.

3. Management filed written statement, alleging therein that as per the Bank-policy, the workman was engaged by the contractor for providing service to the Bank as part time Sweeper/Peon from time to time. The workman was never employed by the management therefore, the termination of the services of the workman by the management does not arise. It is denied that the workman worked for the time period as alleged and the persons are being employed by service provider agencies for certain work and period. No T.A. Bill and expanses were ever paid to the workman by the management-bank as an employee of the Bank. The travelling expenses were paid to the workman only where he was sent outside on the request of the bank in emergent situations. There is no relationship of employer and employee between the workman and the respondent-management. No provisions of the Industrial Disputes Act, 1947 have been ever violated by the respondent-management. No notice of the termination of the workman was required to be served on the workman by the management as he was never employed by the management. At present under the new policy of the bank, if any post of Peon or Daftri exists and is required to be filled, that is to be filled by following the regular process of appointment under the Rules and Regulations of the Bank. It is therefore, prayed that the workman is not entitled for any.

4. Workman has filed replication to the written statement filed by the management, denying the facts that the workman was engaged through contractor. It is further denied that the workman was never employed by the management and termination of the services of the workman by the management does not arise. Notice is required to be served on the workman before his termination by the management as the workman was employed by the management and relationship of employee and employer was there between the workman and management. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

5. Claimant/workman Sushil Kumar has submitted his affidavit as Ex.WW1/A along with documents bearing 65 pages(colly) and cross-examined by the learned counsel of the management.

6. Management has submitted affidavit of witness Jagan Lal, Chief Manager, State Bank of India, Railway Road Branch, Hisar, who submitted his affidavit as Ex.MW1/A who is cross-examined by the learned counsel of the workman.

7. I have heard the learned counsel of the workman Smt. Bhupinder Kaur as well as learned counsel of the management Sh. S.K. Gupta and perused the file.

8. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through the service provider agency is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

9. The first contention is regarding the claimant to be not a workman advanced by the learned counsel of the management, alleging therein that even if it is presumed that he was appointed by the management on job basis for a particular time even then he does not fall within the definition of workman as such, the Industrial Disputes Act, 1947 is not application to the present case. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. Learned counsel of the management contended that the alleged termination of the workman does not fall within the ambit of retrenchment because he is not a regular employee and working on behalf of the security agencies mentioned in the written statement namely M/s Longia Security Cover as well as Mrs. Narinder Kaur, Manpower and Security Suppliers as such, he is temporary employee working on daily wages under the circumstances, his dis-engagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act, 1947. As per the learned counsel of the management, the concept of retrenchment therefore, cannot be stretched to such an extent to cover the claimant as an employee of the management and protection under Section 25-F and other Sections of the EPF & MP Act are applicable to the claimant. Learned counsel of the management-bank contended that alleged dis-engagement/retrenchment does not fall within the definition of retrenchment incorporated in Section 2(oo) of the Industrial Disputes Act, 1947 in the light of the judgment of Hon'ble Supreme Court in the case of ***Himanshu Kumar Vidyarthi and others Vs. State of Bihar & Others, AIR 1997, Supreme Court, page 3657*** as well as judgment of Division Bench of the Hon'ble Punjab & Haryana High Court in the case of ***Divisional Forest Officer, Rohtak Vs. Jagat Singh and another, C.W.P. No.7957 of 2008, decided on 06.11.2008***.

11. So far as the relationship of employer and employee is concerned, learned counsel of the claimant/workman contended that it is admitted fact by the management that the workman served with the management do not directly by on behalf of the Security Service Providing Agency such as M/s Longia Security Cover as well as M/s Narinder Kaur Manpower Security Suppliers but management has not submitted any contract entered into between the management and Security Cover and Manpower Agency. In this context, learned counsel of the claimant has drawn my attention towards the statement of management witness namely Jagan Lal, Chief Manager, State Bank of India, Railway Road, Hissar. This witness has specifically admitted in his cross-examination that he has no record regarding the agreement with M/s Longia Security Cover as well as M/s Narinder Kaur Manpower Security Suppliers. Thus, there is no evidence at all on the part of the

management to prove that workman was engaged through the above mentioned agencies as is stated in the written statement.

12. Learned counsel of the workman contended that payment of salary as well as other expenses like auto rickshaw charges, dak delivery, fax report, no notice delivery, purchase of stationary etc. along with T.A. bills etc. are reimbursed by the bank from its account. Learned counsel of the workman contended that all the documents are in possession of the management which has not been produced before the Tribunal for passing a reasoned award because it was against the bank-management. Question remains to be seen whether claimant has proved that he was directly engaged by the respondent-management in the month of May 2008 and rendered his services till the alleged retrenchment/termination on November, 2017. This fact has to be proved by the documentary evidence as well as oral evidence in order to prove that he was employed by the management directly. He has submitted his affidavit as Ex.WW1/A and relied upon the documents bearing 65 pages(colly) pertaining to bank-accounts and recommendation of his name for regularization. Claimant Sushil Kumar has been cross-examined by the learned counsel of the management where he has admitted that there was neither any advertisement nor recruitment nor he was appointed after due selection procedure. He has admitted that he was employed by the Branch Manager and paid salary by the bank-Manager throughout his service tenure. Thus, it is clear from the cross-examination of the claimant that his appointment was not as per the Rules and Regulations of the Bank instead he was directly appointed by the Bank-Manager, performing the work of Sweeper and subsequently, he was also engaged for other works like Dak Delivery, FAX Repait, Loan Notice Delivery, Purchase of Stationary etc. It is a specific case of the workman that he was earning Rs.7,000/- as salary at the time of his retrenchment which is proved by the bank-accounts of the workman. Learned counsel of the claimant contended that all the payments are made from the State Bank of India account which is rebutted by the learned counsel of the management but there is nothing on record to prove that claimant was paid by any service provider agency as mentioned in the written statement of the management.

13. Undoubtedly, in Tribunal, cases have to be decided on the basis of the preponderance of the probability and not the proof beyond reasonable doubt. Similarly, the Hon'ble Supreme Court in the case of ***Municipal Coruporation Faridabad Vs. Shri Niwas, Appeal(Civil) 1581 of 2009, decided on 13.09.2004*** has held that provisions of Indian Evidence Act in an adjudication, the general principles provided however, applicable. It is also in pray for the Industrial Tribunal to see that principle of natural justice are complied with burden of proof is on the claimant/workman. Learned counsel of the workman has contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of UP Civil Appeal No.2461 of 1999 decided on 21.07.2003***, that adverse inference should be drawn against the management for the non-production of the documents. Thus, as per the admission of the management witness namely Jagan Lal, Chief Manager and oral evidence and documentary evidence filed by the workman, it is beyond doubt that claimant has initial burden with respect to the onus that he was in the employment of management.

14. So far as the wages and salary of the workman is concerned, it is alleged in the claim statement that he was initially appointed as Sweeper and subsequently work of Sweeper is also assigned as per need basis and additional expenses relating to these works has been paid by the bank-management. He has specifically stated that he had worked with the management from May 2008 to November 2017 regularly and has completed 240 days in each calendar year. During the course of cross-examination, workman has specifically stated that he worked for 240 days before his retrenchment/termination by the bank-management. Learned counsel of the claimant contended that the entire work of the claimant was in actual control of the bank-management along with the payment of salary. Learned counsel of the management contended that salary was not made by the bank and additional expenses may have been paid by the bank from the contingency fund but the factum of the engagement of the service provider agency as is mentioned in the written statement could not be proved by the management. Hence, the argument advanced by the learned counsel of the management by the service provider agency is baseless and without any cogent evidence. In fact, there is no evidence that he was paid by the service providing agencies mentioned in the written statement for any month during the course of his services in the bank. It is noteworthy that factum of his 240 days with the management before his termination is not specifically denied by the management. There may be no dispute that burden is on the claimant/workman to prove a jurisdictional fact that he put 240 days of services as required by Law. But if the assertion of the workman is not denied by the management either in its written statement or in evidence then neither the question of burden nor onus is required to be discussed in detail. It is also noteworthy that management did not produce the best evidence in proof as he had not completed 240 days and it is suddenly fall upon the workman who was compelled by silence of the management to seek all the records when faced with the situation. What is to be noted is that the management did not take the lead to rely on its evidence based on record then by its act of non-production of the attendance and payment records serious suspicion is caused that everything was not alright in the management.

15. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management-bank has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the

management contended that workman in fact was not the employee of the management as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the management. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman was rendering his services with the management for almost 9 year and he had completed 240 days in the year 2017 before termination by the management. As per pleading and affidavit of the workman he was terminated in November 2017 without compliance of Section 25-F of the ID Act. Learned counsel of the workman contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents regarding working days in establishment. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that he had worked for 240 days in preceding 12 months prior to his alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, 1947.

16. Contrary to this, learned counsel of the workman contended that the conduct of the management amounts to unfair labour practice as well as termination amounts retrenchment in the light of the judgment of Hon'ble Supreme Court in the case of ***Bhuvnesh Kumar Dwivedi V. Hindalco Industries Ltd. Civil Appeal Nos.4883 and 4884 of 2014(arising out of SLP(C) Nos.554 and 555 of 2012), decided on 25.04.2014***. In case of ***Bhuvnesh Kumar Dwivedi(supra)***, the Hon'ble Supreme Court while dealing with a similar case in hand has held in the light of the judgment of three Judges Bench of Hon'ble Supreme Court in ***State Bank of India Vs. Shri N. Sundara Money, AIR 1976 SC 1111***, and has held that termination of service of the workman in such cases amounts to retrenchment. The Hon'ble Apex Court has referred the relevant paragraph of ***State Bank of India Vs. Shri N. Sundara Money(supra)*** as follows:-

> ***"A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination...for any reason whatsoever' are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It meets to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service effluxion of time cannot be sufficient." An English case R.V. Secretary of State (1973) 2ALL E.R. 103; was relied on, where Lord Denning, MR observed:***
>
> ***I think the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things-either to termination of notice or termination by effluxion of time. It is often used in the dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.***
>
> ***Buckley L.J, concurred and said:***
>
> ***In my judgment the words are not capable of bearing, that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable***

to a case in which the appointment comes to an end merely by effluxion of time words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a Composite order one giving employment and the other ending for limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

17. The Hon'ble Supreme Court in the case of ***Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari, AIR 2005 SC 2799,*** relied by the learned counsel of the workman on the basis of three vouchers produced by the workman and rendering services of more than 240 days with the Bank has held that there exists relationship of employer and employee and confirmed the order of the Tribunal regarding the regularization of the workman. Same is the position in the case of ***Oil and Natural Gas Corporation Vs. Krishan Gopal(2020) SCC Online, Supreme Court 150***. In both the cases where workman rendered his services for a considerable period with the management, order of regularization is confirmed. It is pertinent to mention that the evidence on record shows that the period of service of the workman extended to 10 years with motive so as to retain the workman as a temporary worker and deprive the workman of his statutory right of permanent workers and status. The aforesaid conduct of the management-bank perpetuates unfair labour practice as defined under Section 2(r) of the Industrial Disputes Act, 1947 which is not permissible in view of the Section 25-T and 25-U of the Industrial Disputes Act, 1947 read with Entry at Serial No.10 in Vth Schedule of the Industrial Disputes Act, 1947 regarding the unfair labour practice. It is not disputed that management has neither issued notice nor compensation in lieu of notice as is enshrined under Section 25-F of the Industrial Disputes Act, 1947.

18. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workman has worked with the management-bank from May, 2008 to November, 2017. There is no legal show cause notice or charge-sheet issued to the claimant/workman by management-bank. Moreover, the job of the claimant/workman to do Sweeping work is of perennial and regular in nature. Learned counsel of the workman contended that in the given scenario, facts and evidences on record, it is crystal clear that management-bank has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with continuity of service and entire back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel of the workman has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** ***reported as (2013) 10 SCC 324, Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80, Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd.(supra), Punjab National Bank Vs. Ghulam Datsgir(1978) ILLJ 312, Supreme Court, G.M. Tanda Thermal Power Project Vs. Jai Prakah Srivastava & Anr. Civil Appeal Nos.4809-4810 of 2007(Arisingojut of SLP(C) Nos.9380-9381 of 2005), decided on 11.10.2017, as well as judgment of the Division Bench of Hon'ble High Court in the case of The Head Master, Government High School, Behrana Vs. Ajit Singh and another, CWP No.9451 of 2002, decided on 26.08.2003.***

19. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under:-

"The propositions which can be culled out from the aforementioned judgments are:

In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(i) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

20. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as void ab initio, sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

21. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman along with payment of back wages.

22. Undoubtedly, in cases relied by the learned counsel of the management of Hon'ble Supreme Court as well as Hon'ble High Court of Punjab & Haryana has held that service of daily wager if terminated, it does not fall within the retrenchment as defined under Section 2(oo)(b) of the Act as such, workman cannot be reinstated on account of violation of Section 25-F and 25-G of the Industrial Disputes Act, 1947. Similar view is expressed by the Hon'ble Supreme Court in the case of ***G.M. Tanda Thermal Power Project Vs. Jai Prakash Srivastava & Anr.(supra).*** The relevant and decisive factor in both the cases was that workman was a daily wager not a regular employee who has served more than 9 years with the management. But so far as case in hand is concerned, it is a proven fact that workman has rendered regular and continuous service for 9 years with the management. As such, the case law relied by the learned counsel of the management is not applicable to the present case.

23. So far as this case is concerned, workman has prayed his reinstatement in service with full back wages along with all consequential benefits with interest. The workman has specifically pleaded in his petition as well as in his evidence that he is unemployed since his retrenchment/termination. Moreover, nothing has been cross-examined from this witness regarding his post employment as such, the factum of his unemployment is unrebutted as management has not submitted any cogent evidence with respect of his future employment after the alleged termination. It may be presumed that workman has certainly done some work for his livelihood in these years. Hence, by looking the period of retrenchment, the tenure of service of the workman, the nature of service, this Tribunal is of the considered opinion that workman is entitled for reinstatement in service along with 50% back wages and the management is directed to reinstate the workman with 50% back wages within three months from the date of the notification of the award.

24. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 50/2012) को प्रकाशित करती है।

[सं. एल-41012/35/2009-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen.

[No. L-41012/35/2009--IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

ID NO. 50 of 2012

In the matter of Industrial Dispute

Between:

Shri Anil Kumar Dubey,
S/o Sh. Prem Shankar Dubey,
R/o 106/219, Gandhi Nagar,
Kanpur (U.P)-208012.

Versus

1. The Chairman, Artificial Limbs Manufacturing Corporation of India, Naramau, Kanpur (U.P).

2. The Divisional Medical Officer, Northern Railway, Central Hospital, Connaught Place, New Delhi.

AWARD

Originally Central Government, Ministry of Labour referred the dispute vide notification No. L-41012/35/2009-IR(B-I) dated 22.06.2012 under the schedule:-

"Whether the demand of Shri Anil Kumar Dubey for continuance of his services in the Central Hospital, Northern Railway/ Artificial Limbs and Applications Centre, Northern Railway, New Delhi 24/7/1985 is legal and justified? To wht relief Shri Dubey is entitled?"

for adjudication. Later by Corrigendum vide notification No. L-41012/35/2009-IR(B-I)(pt) dated 05.09.2017 issued by the Government of India Ministry of Labour the schedule was modified.

It appears subsequently the aforesaid schedule was modified further again vide notification No. L-41012/35/2009-IR(B-I)(pt) dated 14.09.2017

In Industrial dispute claimant workman Anil Kumar Dubey submitted the claim application dated 18.07.2012 . Later permission was accorded for filing an amended claim application. The averments of the amended claim application dated 05.12.2017 are important for adjudication of this dispute. The averments of the claim application of the workman may be concisely stated as follows:-

Claimant workman Anil Kumar Dubey had passed diploma in Mechanical Engineering and Diploma in prosthetic and orthotic and was appointed under the ALIMCO, Kanpur on 14.12.1982 in the scale of pay 320-400 as prosthetic and orthotic technician. The Northern Railway management created two regular vacancies of prosthetic and orthotic technician and two candidates namely Gore Lal and Jugal Kishore Sharma had applied for the said posts, interview was held on16.05.1984 and Gore Lal was selected though his qualification was ITI passed out. The hospital of respondent no. 2 was managed and controlled by Northern Railway. From 17.05.1984 till 31.07.1985 afternoon, the services of claimant workman were taken by respondent no.2 Northern Railway. It is averred that one order of termination dated 23.07.1985 was served on the workman on 26.07.1985. It is averred by the workman that his termination by respondent no. 2 in Northern Railway Central Hospital was done to accommodate a candidate from Chandigarh division with manipulation. It is averred by the workman that he was thrown out of the job by respondent no. 2 without retrenchment notice and notice pay contrary to provisions of the Industrial Disputes Act, 1947. Due to illegal termination the workman had to undergo unemployment and he was financially devastated. It is stated by the workman that the appointment of Sanjeev Sharma as prosthetic technician sponsored by the Railway Service Commission (RSC), Chandigarh was thoroughly illegal. Stating as above the workman claimant has prayed for declaring his termination from employment with effect from 24.07.1985 as invalid and prayed for reinstatement with all back wages.

Written counter was submitted by respondent no. 1 (ALIMCO) with averments that the claimant workman though was originally under employment of Respondent No.1 he had submitted his resignation which was accepted by the management and he was relieved there from. On behalf of O.P.2 the Northern Railway Central Hospital written statement was submitted with averments which may be concisely stated as follows:-

The claimant was appointed on the post of prosthetic technician with effect from 11.06.1984 purely on ad hoc-basis with condition that his services would be terminated as soon as a duly selected candidate from Railway Service Commission (RSC) Allahabad/Chandigarh is available for appointment. The services of the workman were terminated with selection and joining of regularly selected candidate selected by R.S.C, Chandigarh Shri Gore Lal Yadav was selected by the Railway Recruitment Board, Chandigarh and his services were regularized as orthotic technician. It was submitted on behalf of O.P.2 that Industrial dispute has been

raised by the claimant after more than 26 years after termination and the claim of the claimant is barred by limitation. It is further submitted that originally claimant had filed his application for relief from O.P. 1.

For adjudication of the reference the following points are to be answered:-

1. Whether the action of the management of Central hospital, Northern Railway, artificial limbs and application Central Northern Railway, New Delhi (O.P. NO.2) in terminating the services of claimant petitioner prosthetic technician ad hoc w.e.f 26.07.1985 is justifiable and is legally valid?

2. Whether the claimant workman is legally entitled for order of reinstatement in his job with continuity of service?

3. To what other relief the claimant petitioner is legally entitled?

All the parties have submitted their arguments in extenso.

Point No.1

Whether the action of the management of Central hospital, Northern Railway, artificial limbs and application Central Northern Railway, New Delhi (O.P. NO.2) in terminating the services of claimant petitioner prosthetic technician ad hoc w.e.f 26.07.1985 is justifiable and is legally valid?

Originally as per the reference received before this Tribunal communicated in the letter of Ministry of Labour Letter no.L-41012/35/2009-IR(B-1) dated 22.06.2012 (Paper 2/33) this Tribunal was called upon to answer as to whether the demand of Anil Kumar Dubey for continuance of his services in the central hospital Northern Railway/ Artificial Limbs and application Central Northern Railway after 24.07.1985 was legally justifiable. It appears from the consolidated claim application submitted by the claimant dated 05.12.2017 that he has prayed for declaring termination of his service from 24.07.1985 as void with reinstatement with continuity of his service and with backwages. From the averments made by the claimant workman it is seen that by order dated 24.07.1985 Sanjeev Sharma was appointed as prosthetic technician sponsored by Railway service commission (in short RSC), Chandigarh. Claimant workman has challenged this termination on the ground that the Employer had not fulfilled the statutory condition under section 25F of ID Act. To buttress the claim of the workman it is submitted that as per the letter dated 03.05.1984 received by OP no.2, he faced the interview and was found successful and appointment letter 17.05.1984 was issued by OP no. 2 in favour of the workman.

It is vehemently submitted on behalf of the workman that there was no mention that services of the workman will be terminated by substitution of a candidate sponsored by RSC, Allahabad/Chandigarh. It is forcefully submitted that there was no fixed period of appointment and as such section 200 bb of ID Act does not govern the situation. It is further submitted that the word Chandigarh has been added by way of tampering by OP no. 2. It is submitted on behalf of workman that witness for OP no.2 Ramu Ram deposed denying his knowledge that there was a condition in the letter for Renewal of the post. It is boldly suggested on behalf of the workman that there was no stipulation that prosthetic technician would be disengaged on sponsoring a candidate by the RSC, Allahabad/Chandigarh. At this point for the sake of clarity it appears pertinent to state here that in matters of appointment and subsequent events such as continuance and termination of the service the documentary evidence produced by the parties shall have preponderance over oral evidence. Oral evidence deposed by a witness may be wavering leading to falsehood but the contents of the documents cannot be altered by any stretch of imagination. It may be correct that in the document notarized stated to be a copy of the notice dated 11.06.1984 (paper no 29/30) nothing was mentioned that the candidate sponsored by RSC, Chandigarh would replace the workman. Authenticity of this document has been shattered by O.P no.2. OP no.2 produced the copy of the notice dated 11.06.1984 marked M.E.1 which also bears the signature dated 11.06.1984 of the claimant in token of receipt of the original. This document is a token of receipt of the original. This document is more than 30 years old and its authenticity cannot be discarded on flimsy grounds. This document M.E.1 is prima facie found to be free from tampering or any kind of manipulation. From its face value this document can be read as primary evidence prepared simultaneously along with the original in a mechanical process. M.E.1 dated 11.06.1984 clearly spells out that the workman (Anil Kumar Dubey) was appointed purely on ad hoc basis. The document marked M.E.4 was issued on date 17.05.1984 by the chief hospital superintendent Northern Railway to workman Anil Kumar Dubey. This letter marked M.E.4 dated 17.05.1984 clearly shows that the workman was given ad hoc appointment. From the aforesaid 2 documents. It is clear that the appointment of the workman in the Central hospital Northern Railways was purely on ad hoc basis. Even the document marked M.E.3 dated 03.05.1984 spells out that Anil Kumar Dubey was initially offered a purely temporary appointment on ad hoc basis with the condition that he was most likely to be replaced by a selected candidate by RSC, Allahabad. Since the appointment was on ad hoc basis it cannot be said that the termination of the workman w.e.f 26.07.1985 was illegal.

Though it is a fact that claimant workman was allowed scale of pay Rs 330-480 as found from the documents marked ME3 and ME4 that ipso facto will not confer any right on him to claim for permanency of his appointment when his appointment was purely temporary on ad hoc basis.

It may be correct that initially it was stated on behalf of OP no.2 that the original document regarding the offer of appointment to the workman was not available (paper no. 12/1) and paper no. 12/2) but later on in the course of hearing M.E.1, M.E 2 and M.E.3 were produced by OP no. 2 before this Tribunal. Though this point as raised by the claimant workman appears ostensible the reality behind the case cannot be completely brushed aside. Appointment letter of the workman by O.P no.2 was issued in 1984. Industrial dispute before this Tribunal was raised around twenty four years after. It is not normally expected that in offices such documents in respect of appointment of more than two decades past should be readily available. On the other hand the notarized document produced by the claimant workman clearly shows that the appointment / employment of the claimant workman was to be terminated on sponsoring of a qualified candidate by the Railway Service Commission, Allahabad / Chandigarh. If the documents M.E. I, M.E. II and M.E.III are taken into evidence the claimant workman is not taken by surprise.Though post of one Prosthetic Technician was created by the Railway Board which was to continue for one year from 01.04.1984 to 31.03.1985 for that situation no legitimate expectation could arise in favour of the claimant workman for continuance of his job under O.P no.2 when his appointment was temporary on ad hoc basis. A post of Prosthetic Technician might be falling vacant but vacancy of that post will not enure in the right of claimant Anil Kumar Dubey to claim for absorption in that vacancy.

In view of foregoing discussions the answer to point no. 1 goes against the claimant workman.

Point No.2

Whether the claimant workman is legally entitled for order of reinstatement in his job with continuity of service?

On behalf of claimant workman it is submitted that the railways should have complied with the provision 25 F of the ID Act before effecting termination of the services of the workman. For supporting such stand attention of the Tribunal has been drawn to the letter of the Railway Board dated 24.03.1984 which otherwise speaks that the post of prosthetic technician was created w.e.f 01.04.1984 and to continue up to 31.03.1985 for one year. Further attention of this Tribunal was drawn to the paper marked ME 3 and it is contended on behalf of claimant workman that there is no reference for filling the vacancy by a candidate to be sponsored by the R.S.C, Chandigarh. It is submitted on behalf of the claimant workman that the abrupt termination of his services without notice or notice pay contemplated under section 25F of Industrial Disputes Act was thoroughly a violation of statutory mandatory provision by the employer. It is further submitted that the claimant workman was never appointed for a fixed period for which the notice under section 25 F of the ID Act could be dispensed with.At this point it appears relevant to state here that originally the claimant workman instituted a proceeding before the State Labour court, Kanpur against the O.P.1, the ALIMCO in 1986 in which the claimant petitioner did not get any relief and thereafter in 2009 the claimant filed an application before the Assistant Labour Commissioner Central claiming to be treated in continuous employment of O.P.1 w.e.f 21.12.1982 upto 10.08.1985.

It is further contended in that proceeding before the ALC, Central that the claimant workman was neither paid any notice pay nor any retrenchment compensation on 11.08.1985 nor issued notice and O.P.1 ALIMCO refused employment to the applicant making blatant violation of section 25H and 25G of the I.D Act.

From the proceeding initiated by the claimant workman before the Assistant Labour Commissioner Central it is crystal clear that he had claimed continuity of employment under ALIMCO which is separate from the Northern Railways.

It may be correct that in the original reference dated 22.05.2012 (paper no. 2/33) the dispute was raised against the Northern Railways. The reference was subjected to corrigendum on 05.09.2017 and on 14.09.2017. At this point it appears apposite to state here that though the workman was not appointed for fixed period it is revealed from the letters dated 03.05.1984 and 17.05.84 that Anil Kumar Dubey was given the offer of appointment on ad hoc basis against an existing vacancy with condition of termination without any notice. At this point it appears pertinent to state that any appointment though on ad hoc basis is most likely done against the existing vacancy but appointment on ad hoc basis cannot be recognized to confirm absolute right of posting on the said vacancy. It is also clear that under O.P.1 the petitioner was appointed on a temporary basis (paper 29/45) for 12 months. The documents marked ME3 and ME4 show that the Northern Railways gave appointment to the claimant workman on ad hoc basis. In view of such un-shattered documentary evidence it can be reasonably concluded that the Industrial Dispute the claim of the workman for continuity of service w.e.f 24.07.1985 with back wages is legally unsustainable against the Northern Railways. In other words the claim of continuity of service of the workman w.e.f 26.07.1985 as raised in 2009 becomes a time barred relief. A document WE2 dated 13.09.1984 may indicate that the workman was recommended by ALIMCO for

engagement in Northern Railway but the contents of the said document WE2 also show that the claimant workman was on unauthorized absence since 10.09.1984. Law is clear that even if section 25F of the ID Act is not complied with reinstatement with all back wages is not the automatic consequence.

From the document (paper no. 2/30) it is manifest that the claimant was given the opportunity to appear at the examination for the post of Prosthetic Technician conducted by the Railway Service Commission but he has admitted that he could not appear at the said examination due to the death of his grandfather.

The notice dated 11.06.1984 paper no 29/23 which is a notarized document which can be read as strong evidence with regard to the nature of appointment offered by O.P NO. 2 in favour of the claimant workman clearly establishes that Shri Anil Kumar Dubey s/o Shri P.S Dubey was appointed as Prosthetic Technician purely on ad hoc basis in the scale of pay Rs 330 -480 on 11.06.1984 with condition that he would be replaced by a selected candidate from Railway Service Commission Allahabad/ Chandigarh .

Status of employees appointed on ad hoc basis has been enunciated by the Hon'ble Supreme Court in the following case laws:-

In the Case Law Yogesh Mahajan v/s AIIMS [2018 LLR 366] it has been observed by the Hon'ble Supreme Court in the following words"-

It is settled law that no contract employee has a right to have his or her contact renewed from time to time.That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contact extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contact. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Uma Devi. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so , no right accrues in favour of the petitioner for regularisation of his services. The decision in Uma Devi does not advance the case of the petitioner.

In Indian Drugs & Pharma Ltd. and Workman [2007 (112) FLR 474] Civil Appeal No.4996 of 2006 it has been observed by the Hon'ble Supreme Court in the following words:-

In a recent Constitution Bench decision of this Court in Secretary, State of Karnataka and others vs. Umadevi & others 2006 (4) SCC 1, this Court has exhaustively dealt with a matter similar to that under consideration in the present case, and we may refer to some of the observations made therein.

In paragraphs 4 and 5 of the said judgment, the Constitution Bench this Court observed :

``The Union, the States, their departments and instrumentalities have resorted to irregular appoints, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of

perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom ? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not the make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench``.

We have underlined the observations made above to emphasize that the Court cannot direct continuation in service of a non-regular appointee. The High Court's direction is hence contrary to the said decision.

Thereafter in paragraph 33 it was observed:

``It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non- available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment``.

The underlined observation in the above passage makes it clear that even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case.

In paragraph 43, the Court observed:

``Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme``.

The underlined observations above clearly indicate that the casual, daily rated, or ad hoc employees, like the respondents in the present appeal, have no right to be continued in service, far less of being regularized and get regular pay.

In paragraph 45 this Court observed :

``While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arm's length since he might have been

searching for some employment so as to eke out his livelihood and accept whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution".

In view of the aforesaid enunciation of the Hon'ble Supreme Court with regard to status of ad hoc employee the prayer of the claimant for reinstatement and continuity of service as prosthetic technician under O.P's is legally unsustainable.

In view of foregoing discussions the answer to point no. 2 goes against the claimant workman.

Point No.3

To what other relief the claimant workman is entitled?

In Jagbir Singh vs Haryana State Agriculture Marketing Board in Civil Appeal no 4334 of 2009 it has been held by the Hon'ble Supreme Court in the following words at para 9:-

"Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6-N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to (2007) 9 SCC 353 whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.''

At para 15 of the said case law it has been observed by the Hon'ble Apex Court as follows:

It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

In the discussions made in the foregoing paragraph it has been concluded that the workman was appointed as prosthetic technician on ad hoc basis and he had no legal right for continuance in that post after termination on 24.07.1985. Since the workman was not served with retrenchment notice at best he may be

entitled to get damages. At this distant point of time it is not practically possible to work out the compensation with mathematical accuracy. It is seen from the record that the workman had served under OP no.2 from 11.06.1984 to 24.07.1985 on ad hoc basis. Though it is stated on behalf of the workman that after his disengagement he went without any employment his document shows that he got first class in diploma in mechanical engineering and he was trained as a prosthetic technician. From the documents produced by the workman it is presumed that he could have got the opportunity to employ himself gainfully even after disengagement. While working out compensation reasonable guesswork can be resorted to. Taking the whole scenario into consideration it is held that the workman is entitled to get a salary of one and half months of the present day salary of a prosthetic technician (as one time compensation). The point is answered accordingly. In the result the claim of reinstatement with continuance in the post of prosthetic technician with back wages is treated as unsustainable but the workman is entitled to get compensation which is one and half month salary of prosthetic technician under OP no.2 during present days which shall be deposited by OP no. 2 in the bank account of the workman within thirty days from the date of publication of this award failing which the award shall carry simple interest of nine percent per annum till the amount is cleared.

The reference is answered accordingly. Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रकाश कंस्ट्रक्शन, पानीपत, हरियाणा के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सोहन लाल, श्रमिक के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 20/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2021 को प्राप्त हुआ था।

[सं. एल-30012/11/2015-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2015) of the Central Government Industrial Tribunal/ Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Prakash Construction, Panipat, Haryana and Shri Sohan Lal, Worker which was received by the Central Government on 24.09.2021.

[No. L-30012/11/2015-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 20/2015

Registered on:-18.05.2015

Sohan Lal S/o Ram Kishan, Village-Munak, Post-Munak Khas,
Distt. Karnal, Karnal. ... Workman

Versus

M/s. Prakash Consturction, House No.1069-P, Sector 13-17,
HUDA, Panipat, Haryana. ... Management

AWARD

Passed on:-14.09.2021

Central Government vide Notification No. L-30012/11/2015-IR(M) Dated 27.04.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of M/s Prakash Construction in terminating the services of Sh. Sohan Lal S/o Sh. Ram Kishan is justified? If not, what relief the workman is entitled to and from which date?"

1. Both the parties were put to notice and claimant Deepak Kumar filed statement of claim, with the averment, that he was appointed on 16.04.2012 as skilled worker with Parkash Construction. He was terminated by the management without pay, arrear, bonus, leave encashment as well as other benefits. It is therefore, prayed that the workman may kindly be reinstated in service with full back wages along with 18% interest.

2. Management has not filed any written statement and was proceeded ex parte on 11.08.2016.

3. In order to prove his case, workman filed his affidavit but did not turn up for cross-examination, resulting the closure of his evidence with the observation that affidavit filed by the workman shall not be read in evidence.

4. Contrary to this, management has submitted affidavit of Vikram Kumar but none was present to cross-examine this witness on behalf of the workman hence, opportunity of the workman to cross-examine this witness has been closed by the Tribunal vide order dated 25.08.2021.

5. Heard the learned AR of the management Sh. O.P. Indal in the absence of workman and his counsel and perused the file.

6. At the very outset, it may be observed that this claim petition is contested by either party in a very negligent manner even the claim petition is not signed by the claimant/workman or his counsel. Thus, legally it has become a case of no evidence. Similarly, management has also not filed its written statement in spite of the recalling of the ex parte order against the management vide order dated 30.07.2019 and it has directly submitted the affidavit of witness Vikram Kumar which is of no use in the absence of the written statement of the management.

7. The claim petition filed by the alleged workman through his counsel K.L. Saini reveals that he was appointed for Rs.10,500/- along with height allowance of Rs.2,000/-, room rent of Rs.2,100/- and Rs.1,000/- as monthly bonus. But there is nothing on record in the form of documentary evidence to prove that payment of salary by the management, mode of payment of salary or even employment by the management.

8. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. Nothing has been stated in the claim petition filed by the workman that he has rendered 240 days service in a preceding year from the date of alleged retrenchment. Hence, this Tribunal is of the considered opinion that if there is nothing on record to prove the relationship of employer and employee within the four corners of Law then question of consideration for reinstatement as well as arrears, wages etc become irrelevant. As per the basic Law, workman is under obligation in the light of the ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481*** as well as ***Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47,*** to prove the factum of his employment by the management by proving payment of salary/wages, leave, control and supervision etc. by the management but nothing is on record to prove these facts.

9. Conclusively, it may be observed that this is a case of no evidence and the workman is not entitled for any relief from the management in the light of the reference dated 13.12.2018. Hence, award is answered accordingly.

10. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स क्षेत्रीय प्रबंधक, न्यू इंडिया एश्योरेंस कंपनी लिमिटेड, लुधियाना, पंजाब के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बलजीत सिंह, श्रमिक के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 101/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2021 को प्राप्त हुआ था।

[सं. एल-17012/22/2018-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 101/2018) of the Central Government Industrial Tribunal/ Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Regional Manager, New India Assurance Company Ltd., Ludhiana, Punjab and Shri Baljit Singh, Worker which was received by the Central Government on 24.09.2021.

[No. L-17012/22/2018-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.101/2018

Registered on:-08.01.2019

Baljit Singh S/o Waryam Singh, C/o Sarabjit Singh, R/o H.No.228,
Industrial Area-A, Union Road, Ludhiana (Punjab)-141003. ...Workman

Versus

Regional Manager, M/s. New India Assurance Company Ltd.,
Regional Office, Surya Tower, 108, The Mall, Ludhiana (Punjab)-141001. ...Management

AWARD

Passed on:-13.09.2021

Central Government vide Notification No. L-17012/22/2018-IR(M) Dated 13.12.2018, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether Sh. Baljit Singh, S/o Shri Waryam Singh working as Development Officer under New India Assurance Company Limited, Ludhiana(Punjab) may be considered as 'workman' under ID Act, 1947? If yes, whether the action of the management of New India Assurance Company Limited in termination Shri Baljit Singh S/o Shri Waryam Singh w.e.f. 15.04.1991 is legal, fair and justified? If not, what relief the workman is entitled to and from which date?"**

1. Both the parties were put to notice and claimant Baljit Singh filed statement of claim, with the averment, that he was appointed on 21.06.1982 as Inspector/Development Officer by the management at Divisional Office, Khanna. During his services, the workman had applied for leave for personal urgencies from 01.09.1987 and due leave application was submitted but due to continued and compelling personal and domestic problems, he had to seek extension in his leave from time to time and the same was also applied on 29.09.1987. The workman was not supplied with any copy of order by the competent-authority about any rejection of leave application submitted by the workman. After availing the leave applied for, the workman approached the management at Divisional Office, Khanna for allowing him to join his duties but he was not allowed to resume his duties and was advised by the office to wait for the instruction from the higher-authorities to whom his case

for leave was referred to by the Khanna Divisional Office. The workman approached to the authorities for consideration of his case and for allowing him to join his duties and also to pay his due salary and allowances which were not paid to him for the leave period.

2. Management has not filed any written statement and was proceeded ex parte on 18.12.2019.

3. Claimant/workman Baljit Singh has submitted his affidavit as Ex.WW1/A along with documents Ex.W-1 to W-6.

4. I have heard the ex parte arguments of the learned AR of the workman Sh. Subhash Karkara and perused the file.

5. The first issue which requires for consideration by the Tribunal in pursuance of the reference of the Ministry of Labour and Employment dated 13.12.2018 relates with the claimant being a workman within the definition of Section 2-S of the Industrial Disputes Act, 1947. Learned counsel of the claimant contended that it is not disputed that claimant Baljit Singh was an employee of the management and he has rendered his services from 21.06.1982 till the date of the alleged termination. In this connection, it is relevant to mention the definition of the workman as enshrined under Section 2(S) of the Industrial Disputes Act, 1952 which runs as follows:-

> ***"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or an a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-***
>
> ***(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 *62 of 1957); or***
>
> ***(ii) Who is employed in the police service or as an officer or other employee of a prison; or***
>
> ***(iii) Who is employed mainly in a managerial or administrative capacity; or***
>
> ***(iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercised, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"***

6. Undisputedly, the Hon'ble Supreme Court in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

7. It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947. In this connection, the relevant fact is that workman has stated himself as Development Officer appointed by the management in due course of completing formalities under the Rules and Regulations of the appointment and he had joined his duties at Regional Office, Khanna. Section 2(S) Clause-IIIrd and IVth of the Act is relevant for the purpose in which an exception is made in the definition of workman. According to it when a person is appointed on managerial or administrative capacity or who being employed in a supervisory capacity, draws wages exceeding Rs.1,600/- per mensem will be not covered under the definition of the workman. As per the settled position, a reason cannot be found beyond pleadings to either of party and evidence of admission or denial of facts based on issues. It is rudimentary that only facts-in-issue can be put to trial and the labour court is no exception to this rule. Though the Labour Court was not bound by strict rules of evidence or of procedure under the Civil Code or the Evidence Act but is adjudication has to be based on the fundamental and cardinal principles underlining those acts which are universal in its application to Tribunals. No doubt the Labour Court can follow such procedure as it thinks fit but such procedure has to conform to the

law and the rules of natural justice. It cannot also ignore statutory mandates and limitations placed in the Industrial Disputes Act, 1947 under which it is created.

8. A perusal of the claim petition of the claimant Baljit Singh reveals that nothing has been stated in the claim petition as well as affidavit filed as evidence Ex.WW1/A about the status, authority and salary etc. of claimant which is required to give a legal finding about his being a workman. There is nothing on record to explain whether he is employed in managerial or administrative capacity or in a supervisory capacity as is incorporated in Section(S), Clause IIIrd and IVth of the Industrial Disputes Act, 1947. So far as the argument of the learned AR of the claimant with respect to the admission of the management about the employment of claimant is concerned, there is neither any written statement filed by the management nor any evidence on record except the contention of the workman that he was employed by the management on 21.06.1982. It is averred in para 2 of the claim petition that claimant worked under the control of Regional Office, Ludhiana. According to claim petition, this fact is admitted by the management vide their reply submitted during conciliation proceedings before the Assistant Provident Fund Commissioner Central, Jalandhar. But copy of the alleged reply is not attached with the claim petition as such, facts alleged in para 2 of the claim petition remains simply an averment and not supported with any documentary evidence. Similarly, in para 10 and 11 of claim petition, several facts regarding the absence from duty, enquiry, charge-sheet, misconduct, termination etc has been alleged by the claimant/workman but nothing has been proved by any of the documents with respect to the application of leave or order of enquiry coupled with the termination as is alleged in the claim petition itself. The contention of AR that above documents are not provided by the respondent-management has no force in the light of the legal provision that claimant has to receive these documents either under the RTI Act, 2005 or by moving an application before the Tribunal to summon these documents from the possession of respondent-management. Thus, in fact this case has become a case of no evidence at least with respect to the documentary evidence in support of the facts alleged in the claim petition.

9. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481*** as well as ***Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

10. Question remains to be seen whether claimant/workman has proved that he was directly engaged by the respondent-management as workman on 21.06.1982 and rendered his services till the alleged termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that workman/claimant was employed by the respondent-management. Even claimant has not submitted the letter of appointment while he has alleged that he was appointed by the management on regular basis for the work of Development Officer.

11. Undoubtedly, in Tribunal, cases have to be decided on the basis of the preponderance of the probability and not the proof beyond reasonable doubt. Similarly, the Hon'ble Supreme Court in the case of ***Municipal Corporation Faridabad Vs. Shri Niwas, Appeal(Civil) 1581 of 2009, decided on 13.09.2004*** has held that provisions of Indian Evidence Act in an adjudication, the general principles provided however, applicable. It is also in pray for the Industrial Tribunal to see that principle of natural justice are complied with burden of proof is on the claimant/workman. The fact regarding the payment of salary by the management, the amount paid at the time of the employment as well as at the time of termination has not been mentioned in the claim petition. Similarly, claimant has not mentioned regarding the mode of payment of salary in the claim petition as well as his affidavit filed in the form of evidences. No doubt, there is a long history of litigation between the parties which is proved from the copy of the plaint attached with the affidavit as Ex.W-1 but it is not sufficient to hold that claimant Baljit Singh was in the employment of the management. In fact, the basic feature for holding the relationship of employer and employee between the parties is totally lacking not in the pleadings but also in the evidence filed by the claimant.

12. Conclusively, it may be observed that there is complete lack of pleading or evidence with respect to the finding that claimant falls within the definition of workman or there existed relationship of employer and employee between the parties. In the absence of the basic evidence on record, the legality or illegality of enquiry and termination losses its importance and this Tribunal is unable to answer the reference made by the Central Government for adjudication. Hence, award is answered accordingly.

13. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2021

का.आ. 667.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रकाश कंस्ट्रक्शन, पानीपत, हरियाणा के प्रबंधतंत्र के संबद्ध नियोजकों और श्री दीपक कुमार, श्रमिक के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 18/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2021 को प्राप्त हुआ था।

[सं. एल-30012/12/2015-आईआर-(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 24th September, 2021

S.O. 667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2015) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s The Prakash Construction, Panipat, Haryana and Shri Deepak Kumar, Worker which was received by the Central Government on 24.09.2021.

[No. L-30012/12/2015-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.18/2015

Registered on:-18.05.2015

Deepak Kumar S/o Ram Diya, Village-Sithana Post Kabari,
Distt. Panipat, Panipat. ...Workman

Versus

M/s. Prakash Consturction, House No.1069-P, Sector 13-17,
HUDA, Panipat, Haryana. ...Management

AWARD

Passed on:-14.09.2021

Central Government vide Notification No. L-30012/12/2015-IR(M) Dated 27.04.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of M/s. Prakash Construction in terminating the services of Sh. Deepak Kumar S/o Sh. Ram Diya is justified? If not, what relief the workman is entitled to and from which date?"**

1. Both the parties were put to notice and claimant Deepak Kumar filed statement of claim, with the averment, that he was appointed on 31.01.2010 as Welder with Parkash Construction. He was terminated by the management without pay, arrear, bonus, leave encashment as well as other benefits. It is therefore, prayed that the workman may kindly be reinstated in service with full back wages along with 18% interest.

2. Management has not filed any written statement and was proceeded ex parte on 11.08.2016.

3. In order to prove his case, workman filed his affidavit but did not turn up for cross-examination, resulting the closure of his evidence with the observation that affidavit filed by the workman shall not be read in evidence.

4. Contrary to this, management has submitted affidavit of Vikram Kumar but none was present to cross-examine this witness on behalf of the workman hence, opportunity of the workman to cross-examine this witness has been closed by the Tribunal vide order dated 25.08.2021.

5. Heard the learned AR of the management Sh. O.P. Indal in the absence of workman and his counsel and perused the file.

6. At the very outset, it may be observed that this claim petition is contested by either party in a very negligent manner even the claim petition is not signed by the claimant/workman or his counsel. Thus, legally it has become a case of no evidence. Similarly, management has also not filed its written statement in spite of the recalling of the ex parte order against the management vide order dated 30.07.2019 and it has directly submitted the affidavit of witness Vikram Kumar which is of no use in the absence of the written statement of the management.

7. The claim petition filed by the alleged workman through his counsel K.L. Saini reveals that he was appointed for Rs.10,500/- along with height allowance of Rs.2,000/-, room rent of Rs.2,100/- and Rs.1,000/- as monthly bonus. But there is nothing on record in the form of documentary evidence to prove that payment of salary by the management, mode of payment of salary or even employment by the management.

8. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. Nothing has been stated in the claim petition filed by the workman that he has rendered 240 days service in a preceding year from the date of alleged retrenchment. Hence, this Tribunal is of the considered opinion that if there is nothing on record to prove the relationship of employer and employee within the four corners of Law then question of consideration for reinstatement as well as arrears, wages etc become irrelevant. As per the basic Law, workman is under obligation in the light of the ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481*** as well as ***Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47,*** to prove the factum of his employment by the management by proving payment of salary/wages, leave, control and supervision etc. by the management but nothing is on record to prove these facts.

9. Conclusively, it may be observed that this is a case of no evidence and the workman is not entitled for any relief from the management in the light of the reference dated 13.12.2018. Hence, award is answered accordingly.

10. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

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